

Superior Court of California

County of Monterey

LOCAL RULES

July 2004

**Superior Court of California, County of Monterey
Local Rules of Court**

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CHAPTER 1

DISTRIBUTION OF BUSINESS

1.01 PRESIDING JUDGE

The Presiding Judge shall be chosen by a majority vote of the Judges of the Superior Court and shall hold office at their pleasure. He or she shall perform the duties prescribed by the California Rules of the Court and by these Rules. The Presiding Judge shall, when necessary, designate an acting Presiding Judge. (Adopted effective October 1, 1998)

1.02 CALENDAR ASSIGNMENTS

In December the Presiding Judge-elect shall designate the calendar assignments for the coming calendar year in accordance with the California Rules of Court. (Adopted effective October 1, 1998; Amended effective July 1, 1999)

1.03 MASTER AND DIRECT CALENDAR

1. Master Calendar. All civil trials pending in the Superior Court of the County of Monterey shall be assigned under the master calendar system. The master calendar in Monterey will be presided over by the Supervising Judge of the Monterey Branch.
2. Direct Calendar. All misdemeanor and felony trials shall be assigned under the Direct Calendar system. Any changes to the assigned calendar will be presided over by the Presiding Judge in Salinas.

(Adopted effective October 1, 1998; Amended effective January 1, 2001;
(Amended effective January 1, 2004)

1.04 JUDICIAL ASSIGNMENTS

*** 2004 JUDICIAL ASSIGNMENTS**

Effective Monday, December 22, 2003

The Judges of the Monterey Superior Court have elected The Honorable Terrance R. Duncan as Presiding Judge for calendar years 2003 and 2004. Judge Duncan has announced the 2004 Superior Court Judicial Assignments as follows:

SALINAS COURTHOUSE	
<u>COURTROOM #1</u> North Wing – 3rd Floor	<u>Hon. Terrance R. Duncan</u> Presiding Judge Arraignment Department Criminal Department Grand Jury Legal Advisor

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<u>COURTROOM #2</u> North Wing - 3rd Floor	<u>Hon. Wendy C. Duffy</u> Assistant Presiding Judge Criminal Department Mental Health Department Jury Pool Orientation
<u>COURTROOM #3</u> North Wing - 3rd Floor	<u>Hon. Stephen A. Sillman</u> Criminal Department Jury Pool Orientation
<u>COURTROOM #4</u> North Wing – 1st Floor	<u>Hon. Marla O. Anderson</u> Criminal Department
<u>COURTROOM #5</u> North Wing - 1st Floor	<u>Hon. Russell D. Scott</u> Criminal Department Appellate Department, Presiding
<u>COURTROOM #6</u> North Wing - 1st Floor	<u>Hon. Jose A. Velasquez</u> Criminal Department
<u>COURTROOM #7</u> North Wing - 1st Floor	<u>Hon. Albert H. Maldonado</u> Criminal Department
<u>COURTROOM #8</u> East Wing – 2nd Floor	<u>Hon. Adrienne M. Grover</u> Criminal Department Grand Jury Legal Advisor
<u>COURTROOM #9</u> West Wing – 3rd Floor	<u>Hon. Robert F. Moody</u> Criminal Department Drug Court Juvenile Dependency Department Criminal Writ Department
<u>COURTROOM #10</u> West Wing – 3rd Floor	<u>Hon. Lydia M. Villarreal</u> Domestic Violence (Criminal)
<u>COURTROOM #11</u> 118 W. Gabilan St.	<u>Hon. Richard M. Curtis</u> Criminal Department Drug Court
<u>COURTROOM #12</u> Juvenile Delinquency Court 1422 Natividad Rd., Salinas, CA	<u>Hon. Jonathan R. Price</u> Juvenile Delinquency Department
<u>MONTEREY COURTHOUSE</u>	
<u>COURTROOM #13</u> 3rd Floor	<u>Hon. John M. Phillips</u> Family Law Department Domestic Violence (Civil)

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<u>COURTROOM #14</u> 2nd Floor	<u>Hon. Robert O'Farrell</u> Supervising Judge, Civil Department Master Civil Calendar Civil Department
<u>COURTROOM #15</u> 2nd Floor	<u>Hon. Michael S. Fields</u> Civil Department Appellate Department
<u>COURTROOM #16</u> 1st Floor	<u>Hon. Susan M. Dauphiné</u> Civil Department Probate Department Appellate Department, Alternate
<u>COURTROOM #17</u> 1st Floor	<u>Hon. Kay T. Kingsley</u> Civil Department Appellate Department
<u>COURTROOM #17</u> 1st Floor	<u>Commissioner Diana C. Baker</u> Child Support Services Department
<u>KING CITY COURTHOUSE</u>	
<u>COURTROOM #18</u>	<u>Hon. Gary E. Meyer</u> Criminal Department Civil Department
<u>COURTROOM #19</u>	<u>Commissioner Richard Rutledge</u> Traffic Court Department Small Claims Department
<u>MARINA COURTHOUSE</u>	
<u>COURTROOM #20</u>	<u>Commissioner Richard Rutledge</u> Traffic Court Department Small Claims Department

***Current Judicial Assignments can be viewed on the Court's website at www.monterey.courts.ca.gov**

(Adopted eff. October 1, 1998; Amended eff. July 1, 1999; Amended eff. October 12, 1999; Amended eff. July 1, 2000; Amended eff. January 1, 2001; Amended eff. January 1, 2001; Amended eff. January 1, 2002; Amended eff. July 1, 2003; Amended eff. January 1, 2004; Amended eff. July 1, 2004)

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1.05 COURT HOLIDAYS

New Year's Day	January 1 – Thursday
Dr. Martin Luther King, Jr. Day	January 19 – Monday
Lincoln's Day	February 12 – Thursday
President's Day	February 16 – Monday
Cesar Chavez Day	March 31 – Wednesday
Memorial Day	May 31 – Monday
Independence Day*	July 5 – Monday
Labor Day	September 6 – Monday
Columbus Day	October 11 – Monday
Veterans Day	November 11 – Thursday
Thanksgiving Day	November 25 - Thursday
Day After Thanksgiving Day	November 26- Friday
Christmas Day*	December 24 – Friday
New Year's Day (2005)*	December 31 – Friday

*A holiday occurring on a Saturday is observed on the preceding Friday and a holiday occurring on a Sunday, is observed on the following Monday, pursuant to California Rules of Court, rule 987. (Adopted eff. October 1, 1998; Amended eff. July 1, 1999; Amended eff. January 1, 2000; Amended eff. January 1, 2001; Amended eff. January 1, 2002; Amended eff. July 1, 2003; Amended eff. January 1, 2004)

**Superior Court of California, County of Monterey
Local Rules of Court**

CHAPTER 2

MONTEREY BRANCH

2.01 DAILY MONTEREY SESSION

A daily session of this Court, which shall be called the Monterey Session, shall be held in the County Courthouse in the City of Monterey, California, commencing July 1, 1969, and such session shall be presided over by judges who shall be designated by the Presiding Judge.

The courthouse in Monterey is located at 1200 Aguajito Road, Monterey, California 93940. (Adopted effective October 1, 1998)

2.02 VENUE - MONTEREY BRANCH

The following actions or proceedings shall be commenced in the Monterey Branch:

1. All proceedings for probate of an estate, termination of a life estate or joint tenancy, guardianship, and conservatorship;
2. All civil proceedings, including,
Family Law Proceedings;
Civil Domestic Violence Proceedings;
Harrassment Proceedings;
Department of Child Support Services;
Paternity Proceedings; and,
Adoption Proceedings.

(Adopted effective October 1, 1998; Amended effective January 1, 2001;
Amended effective January 1, 2004)

2.03 TRANSFER TO OR FROM MONTEREY SESSIONS

Any action or proceeding may, for good cause, be transferred from the Monterey Session to the Session at the County Seat or vice versa, on motion by any party or the Court. (Adopted effective October 1, 1998; Amended (renumbered) effective January 1, 2001)

2.04 COURT CALENDAR

The Presiding Judge at the Monterey Session shall set and supervise calendars for all matters pending in said Court. All such calendars shall, under such supervision, be maintained by the Clerk. (Adopted effective October 1, 1998; Amended (renumbered) effective January 1, 2001)

**Superior Court of California, County of Monterey
Local Rules of Court**

CHAPTER 3

JUVENILE DEPARTMENT

3.01 DESIGNATION OF PRESIDING JUVENILE JUDGES

The Presiding Judge may designate all judges of the Superior Court as judges of the Juvenile Court. All business of the Juvenile Delinquency court shall be conducted by the Presiding Judge of the Juvenile Delinquency Department. All business of the Juvenile Dependency Department shall be conducted by the Presiding Judge of the Juvenile Dependency Department. If the Presiding Judge of either the Juvenile Delinquency or Juvenile Dependency Department is not available, the Presiding Judge of the Court shall designate another judge to manage the assignments. (Adopted effective October 1, 1998; Amended effective January 1, 2004)

3.02 SESSIONS

JUVENILE DELINQUENCY

Juvenile Delinquency court sessions are held in the Superior Court Juvenile Branch located at the Probation Department Building, 1422 Natividad Road, Salinas, California 93906. (Adopted effective October 1, 1998; Amended effective July 1, 2002)

JUVENILE DEPENDENCY

Juvenile Dependency court sessions are held at the Salinas Courthouse, 240 Church Street, Salinas, California 93901. (Adopted effective October 1, 1998; Amended effective July 1, 2002)

3.03 FILING OF PAPERS

All papers are to be filed and maintained in the Clerk of the Court Office at the courthouse in Salinas. (Adopted effective October 1, 1998)

3.04 CALENDAR

See Chapter 3, Appendix – Juvenile Court Calendars (Amended effective July 1, 2002)

3.05 RELEASE OF JUVENILE CASE INFORMATION

Under the provisions of Welfare and Institutions Code 827 and the duty imposed upon the Court by the decision of the California Supreme Court in T.N.G. v. Superior Court (1971) 4 Cal. 3d 767, the Juvenile Court of this County makes the following order:

**Superior Court of California, County of Monterey
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IT IS HEREBY ORDERED:

I. The Monterey County District Attorney's Office and County Counsel's Office, probation officers, Child Protective Services workers, adoption workers and law enforcement officials within Monterey County when the best interest of the child will be served, and for governmental purposes only, may release limited information in their possession as outlined in Section II of this order to the following:

- a) The minor.
- b) The minor's attorney.
- c) Monterey County District Attorney's Office when directly involved in the case.
- d) Any Monterey County law enforcement agency directly involved in the child abuse case.
- e) Monterey County Probation Department, limited to W & I 300 and 600 matters, child custody matters upon order of the Superior Court, investigations of free from custody petitions and the probation officer for the offender.
- f) All County public welfare agencies, child protective services units and County Adoption agencies on a need to know basis as determined by Monterey County Department of Social Services.
- g) Any requesting public or private hospitals involved in the child abuse case.
- h) Mental Health facilities and placement agencies that require the information for the placement, treatment or rehabilitation of the minor.
- i) The California Department of Corrections on a need to know basis as determined by Monterey County Department of Social Services.
- j) Any federal investigative and enforcement agency directly involved in the child abuse case.
- k) Any out-of-state law enforcement agency directly involved in the child abuse case.
- l) Child Custody Mediation Services of Superior Court.
- m) Other persons as authorized by the Court.

II. Such information shall be limited to the following:

- a) The date and nature of the allegations of a referral, i.e., sexual abuse, physical abuse, neglect and by whom.
- b) Whether referral was determined to be founded or unsubstantiated.
- c) Whether there is an open CPS case or closed case. If closed case, whether family completed services or did not complete services.
- d) The plan to file or not to file a petition and the charges alleged on the petition.
- e) The order of the Court to detain or not detain.
- f) The date and location of the hearing.
- g) The identification of the judge who heard or will hear the matter.
- h) The finding and disposition of the Court.

Superior Court of California, County of Monterey
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III. The Department of Social Services may disclose any information pertaining to minors under the jurisdiction of the juvenile court, or pertaining to their parents or guardians, to any person who meets all of the following requirements:

- a) the person provides diagnostic, assessment or treatment services to the parents or minors in furtherance of the service plan for the parents or minors,
- b) the person, in the judgment of the social worker, needs to know the information to be disclosed in order to facilitate the provision of such services, and
- c) the person is subject to statutory, contractual, or professional rules of confidentiality that would protect the information from further dissemination.

IV. All information received by an authorized recipient listed in Section I as a result of this order must be kept confidential by that recipient and shall not be further released except to one or more of the other listed authorized recipients.

V. Requests by law enforcement agencies to disseminate information in its files to a person or agency not listed in Section I will be considered by the Juvenile Court on a case-by-case basis.

VI. Concurrently with the release of information by a law enforcement agency in this county to any recipient not listed above and authorized by Court order pursuant to Section V, the law enforcement agency is required to furnish the recipient with a copy of Section I and II of this order to preserve confidentiality.

VII. Social workers, district attorneys, probation officers, and law enforcement officials are authorized to release information to identifiable potential victims or their parents or guardians that a minor constitutes a serious danger to their person or property. They may release the names and descriptions of the minor, his or her whereabouts, and the nature of the threat toward the identifiable potential victim.

VIII. A copy of this order must be sent to the following:

- a) All law enforcement agencies in this county.
- b) The Monterey County District Attorney's Office and County Counsel's Office.
- c) The Monterey County Social Services Agency (e.g., the Welfare Department).
- d) The Monterey County Probation Department.
- e) The California Bureau of Identification and Investigation.
- f) Placement agencies that require the information for placement, treatment or rehabilitation; but only when these agencies are contacted for placement.
- g) Monterey County Department of Mental Health

Superior Court of California, County of Monterey Local Rules of Court

This Rule does not prohibit release of information by district attorneys, probation officers or law enforcement agencies about crimes or the contents of arrest reports except insofar as it discloses the minor's identity. (Adopted effective October 1, 1998; Amended effective July 1, 1999)

3.06 COURT APPOINTED SPECIAL ADVOCATE PROGRAM

A. The Superior Court may appoint child advocates to represent and report to the court on the interests of dependent children. In order to qualify for appointment the child advocate must be trained by and function under the auspices of a Court Appointed Special Advocate Program, formed and operating under the guidelines established by the National Court Appointed Special Advocate Association. (W & I 1356.5)

The advocate program shall report regularly to the Presiding Judge of the Courts and Judges of the Juvenile Dependency and Juvenile Delinquency Courts with evidence that it is operating under the guidelines established by the National Court Appointed Special Advocate Association and the California State Guidelines for child advocates. (Adopted effective October 1, 1998; Amended effective July 1, 1999; Amended effective January 1, 2000; Amended effective July 1, 2002)

3.07 CHILD ADVOCATES

A) ADVOCATES' FUNCTIONS

Advocates serve at the pleasure of the Court having jurisdiction over the proceeding in which the advocate has been appointed. In general, an advocate's functions are as follows:

- 1) to support the child throughout the Court proceedings;
- 2) to establish a relationship with the child to better understand his or her particular needs and desires;
- 3) to communicate the child's needs and desires to the Court in written reports and recommendations;
- 4) to identify and explore potential resources which will facilitate early family reunification or alternative permanency planning;
- 5) to provide continuous attention to the child's situation to ensure that the Court's plans for the child are being implemented;
- 6) to the fullest extent possible, to communicate and coordinate efforts with the case manager (probation officer/social worker);
- 7) to the fullest extent possible, to communicate and coordinate efforts with the child's attorneys; and
- 8) to investigate the interests of the child in other judicial or administrative proceedings outside Juvenile Court; to report to the Juvenile Court concerning same; and, with the approval of the Court, offer his/her services on behalf of the child to such other courts or tribunals.
- 9) to be present in court for all hearings when the case is present in court.

**Superior Court of California, County of Monterey
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B. SWORN OFFICER OF THE COURT

An advocate is an officer of the Court and is bound by these rules. Each advocate shall be sworn in by a Superior Court Judge/Referee/Commissioner before beginning his/her duties, and shall subscribe to the written oath set forth in the Appendix attached hereto. (Adopted effective October 1, 1998; Amended effective July 1, 2002)

3.08 APPOINTMENT OF ADVOCATE – SPECIFIC DUTIES

The Court shall, in its initial order of appointment, and thereafter subsequent order as appropriate, specifically delineate the advocate's duties in each case, which may include independent investigation of the circumstances of the case, interviewing and observing the child and other appropriate individuals, reviewing appropriate records and reports, consideration of visitation right for the child's grandparents and other relatives, and reporting back directly to the Court as indicated. If no specific duties are outlined by Court order, the advocate shall discharge his/her obligation to the child and the Court in accordance with the general duties set forth in 3.05 above. (Adopted effective October 1, 1998; Amended effective July 1, 2002))

**Superior Court of California, County of Monterey
Local Rules of Court**

APPENDIX

**IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA
IN AND FOR THE COUNTY OF MONTEREY**

OATH

Monterey County Court Appointed Special Advocate (CASA)

I, _____ do solemnly swear that I will support and defend the Constitution of the United States and the Constitution of the State of California against all enemies, foreign and domestic; that in serving as an officer of the Court, I will follow the rules of Court and will maintain fairness, impartiality and integrity; that I am committing to a life-time of preserving the privacy of those for whom I am appointed and will only divulge confidential information to those entitled to receive it; and that I will always act for the best interest of the child(ren) I am assigned to help.

I will truly and faithfully perform the duties of CASA according to the law; I will provide written reports of my findings and recommendations to the Court and will appear at all necessary hearings. I will explain Court proceedings to the child(ren) and inform the Court if services are not available or being used.

I take this obligation freely, without any mental reservation or purpose of evasion.

Date: _____
Monterey County CASA Volunteer

Subscribed and sworn to before me on: _____.

Judge of the Superior Court

Rev. 01-01-00

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3.09 RELEASE OF INFORMATION TO ADVOCATE

A. TO ACCOMPLISH APPOINTMENT

To accomplish the appointment of an advocate, the Judge/Referee/Commissioner making the appointment shall sign an order granting the advocate the authority to review specific relevant documents and interview parties involved in the case, as well as other persons having significant information relating to the child, to the same extent as any other officer appointed to investigate proceedings on behalf of the Court.

B. ACCESS TO RECORDS

An advocate shall have the same legal right to records relating to the child he/she is appointed to represent as any case manager (social worker or probation officer) with regard to records pertaining to the child held by any agency, school, organization, division or department of the State, physician, surgeon, nurse, other health care provider, psychologist, psychiatrist, mental health provider or law enforcement agency. The advocate shall present his/her identification as a court-appointed advocate to any such record holder in support of his/her request for access to specific records. No consent from the parent or guardian is necessary for the advocate to have access to any records relating to the child.

C. REPORT OF CHILD ABUSE

An advocate is a mandated child abuse reporter with respect to the case to which he/she is appointed.

D. COMMUNICATION

There shall be ongoing, regular communication concerning the child's best interests, current status, and significant case developments, maintained among the advocate, case manager, child's attorney, attorneys for parents, relatives, foster parents and any therapist for the child. (Adopted effective October 1, 1998)

3.10 RIGHT TO TIMELY NOTICE

In any motion concerning the child for whom the advocate has been appointed, the moving party shall provide the advocate timely notice. (Adopted effective October 1, 1998)

3.11 CALENDAR PRIORITY

In light of the fact that advocates are rendering a volunteer service to children and the Court, matters on which they appear should be granted priority on the Court's calendar, whenever possible. (Adopted effective October 1, 1998)

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3.12 VISITATION THROUGHOUT DEPENDENCY

An advocate shall visit the child regularly until the child is secure in a permanent placement. Thereafter, the advocate shall monitor the case as appropriate until dependency is dismissed. (Adopted effective October 1, 1998)

3.13 FAMILY LAW ADVOCACY

Should the Juvenile Court dismiss dependency and create family law orders pursuant to Welfare & Institutions Code Section 362.4, the advocate's appointment may be continued in the family law proceeding, in which case the Juvenile Court order shall set forth the nature, extent and duration of the advocate's duties in the family law proceeding. (Adopted effective October 1, 1998)

3.14 RIGHT TO APPEAR

An advocate shall have the right to be present and be heard at all Court hearings, and shall not be subject to exclusion by virtue of the fact that he/she may be called to testify at some point in the proceedings. An advocate shall not be deemed to be a "party," as described in Title 3 of Part II of the Code of Civil Procedure. However, the Court, in its discretion, shall have the authority to grant the advocate *amicus curiae* status, which includes the right to appear with counsel. (Adopted effective October 1, 1998)

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APPENDIX

**IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA
IN AND FOR THE COUNTY OF MONTEREY
JUVENILE DIVISION**

Date: _____

**APPLICATION FOR
JUVENILE COURT RECORDS**

I am requesting access to _____ copies of the following record(s) held by the County Clerk, Juvenile Division:

Minor's Name: _____

Petition Number: _____

Other Identifying Information: _____

I am:

_____ Parent/Guardian of the named juvenile.

_____ Victim

_____ Relative

_____ Staff of Monterey County Victim Witness Assistance Center

_____ District Attorney

_____ Sixth Appellate District Program Member

_____ Victim-Offender Mediation Program Member

_____ Court Appointed Special Advocate (CASA)

_____ Other Specify: _____

Address:

I will use this information for the following purpose(s):

I understand these records are confidential and can be used only for the purposes stated herein.

Signed

If I do not pick up the requested copies personally, a self-addressed, stamped envelope is attached.

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**3.15 REPRESENTATION IN JUVENILE DEPENDENCY PROCEEDINGS
CALIFORNIA RULES OF COURT, RULE 1438(a)**

A. ATTORNEYS FOR CHILDREN

Appointment of counsel is required for a child who is the subject of a petition under Welfare and Institutions Code §300, and is unrepresented by counsel, unless the court finds the child would not benefit from the appointment of counsel.

- a) In order to find that a child would not benefit from the appointment of counsel, the court must find all of the following:
 - 1) The child understands the nature of the proceedings;
 - 2) The child is able to communicate and advocate effectively with the court, other counsel, other parties, including social workers, and other professionals involved in the case; and
 - 3) Under the circumstances of the case, the child would not gain any benefit by being represented by counsel.
- b) If the court finds that the child would not benefit from representation of counsel, the court must make a finding on the record as to each criteria in (a) and state the reasons for each finding.
- c) If the court finds that the child would not benefit from representation by counsel, the court must appoint a Court Appointed Special Advocate for the child, to serve as guardian ad litem as required in Welfare and Institutions Code §326.5.

B. GENERAL COMPETENCY REQUIREMENT

Every party in a dependency proceeding who is represented by an attorney is entitled to competent counsel. "Competent counsel" means an attorney who is a member of good standing of the State Bar of California, who has participated in training in the law of juvenile dependency, and who demonstrates adequate forensic skills, knowledge and comprehension of the statutory scheme, the purposes and goals of dependency proceedings, the specific statutes, rules of court, and cases relevant to such proceedings, and procedures for filing petitions for extraordinary writs.

All attorneys appearing in juvenile dependency proceedings must meet the minimum standards of competence set forth in these rules. These rules are applicable to attorneys representing public agencies, attorneys employed by public agencies, attorneys appointed by the Court to represent any party in a juvenile dependency proceeding and attorneys who are privately retained to represent a party to a juvenile dependency proceeding. (Adopted effective October 1, 1998; Amended effective July 1, 2002)

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3.16 SCREENING FOR COMPETENCY

Effective July 1, 1996, all attorneys who represent parties in Juvenile Court proceedings shall meet the minimum standards of training and/or experience set forth in these rules. Any attorney appearing in a dependency matter for the first time shall complete and submit a Certification of Competency to the Court within 10 days of his or her first appearance in a dependency matter.

Attorneys who meet the minimum standards of training and/or experience as set forth in Rule 3.17, as demonstrated by the information contained in the Certification of Competency submitted to the Court, shall be deemed competent to practice before the Juvenile Court in dependency cases except as provided in subdivision (c) of this rule.

Upon submission of a Certification of Competency (which demonstrates that the attorney has met the minimum standards for training and/or experience), the Court may determine, based on conduct or performance of counsel before the Court in a dependency case within the six month period prior to the submission of the certification to the Court, that a particular attorney does not meet minimum competency standards. In such case, the Court shall proceed as set forth in Rule 3.17 (a)(1)(E) hereinafter.

In the case of an attorney who maintains his or her principal office outside of this county, proof of certification by the Juvenile Court of the California county in which the attorney maintains an office shall be sufficient evidence of competence to appear in a juvenile proceeding in this county. (Adopted effective October 1, 1998; Amended effective July 1, 2002)

3.17 MINIMUM STANDARDS OF EDUCATION, TRAINING AND EXPERIENCE

Effective July 1, 2001, only those attorneys who have completed a minimum of eight hours of training or education in the area of juvenile dependency, or who have sufficient recent experience in dependency proceedings in which the attorney has demonstrated competency, may be appointed to represent parties. Each attorney appearing in a dependency matter before the Juvenile Court shall not seek certification of competency and shall not be certified by the Court as competent until the attorney has completed the following minimum requirements.

- 1) Prior to certification, the attorney shall have either:
 - A) Participated in at least eight hours of training or education in juvenile dependency law which in addition to a summary of dependency law and related statutes and cases, must include information on child development, child abuse and neglect, substance abuse, domestic violence, family reunification and preservation and reasonable efforts, or,

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- B) At least six months of recent experience in dependency proceedings in which the attorney has demonstrated competence in the attorney's representation of his or her clients in said proceedings. In determining whether the attorney has demonstrated competence, the Court shall consider whether the attorney's performance has substantially complied with the requirements of these rules.
- C) In order to retain his or her certification to practice before the Juvenile Court, each attorney who has been previously certified by the Court shall submit a new Certificate of Competency to the Court on or before January 31st of the third year after the year in which the attorney is first certified and then every third year thereafter. The attorney shall attach to the renewal Certification of Competency evidence that he or she has completed at least eight hours of continuing training or education directly related to dependency proceedings since the attorney was last certified. Evidence of completion of the required number of hours of training or education may include a copy of a certificate of attendance issued by a California MCLE provider; a certificate of attendance issued by a professional organization which provides training and/or education for its members, whether or not it is a MCLE provider; a copy of the training or educational program schedule together with evidence of attendance at such program; or such other documentation as may reasonably be considered to demonstrate the attorney's attendance at such program. Attendance at a court sponsored or approved program will also fulfill this requirement.
- D) The attorney's continuing training or education shall be in the areas set forth in subdivision (1)(A) of this rule, or in other areas related to juvenile dependency practice including, but not limited to, special education, mental health, health care, immigration issues, the rules of evidence, adoption practice and parentage issues, the Uniform Child Custody Jurisdiction Act, the Parental Kidnapping Prevention Act, state and federal public assistance programs, the Indian Child Welfare Act, client interviewing and counseling techniques, case investigation and settlement negotiations, mediation, basic motion practice and the rules of civil procedure.
- E) When a certified attorney fails to submit evidence that he or she has completed at least the minimum required training and education to the Court by the due date, the Court shall notify the attorney that he or she will be decertified. That attorney shall have 20 days from the date of the mailing of the notice to submit evidence of his or her completion of the required training or education. If the attorney fails to submit the required evidence or fails to complete the required minimum hours of continuing training or education, the Court shall order, except in cases where a party is represented by retained counsel, that certified counsel be substituted for the attorney who fails to complete the required training. In the case of retained counsel, the

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Court shall notify the party that his or her counsel has failed to meet the minimum standards required by these rules. The determination whether to obtain substitute counsel shall be solely within the discretion of the party so notified. (Adopted effective October 1, 1998; Amended effective July 1, 2002)

3.18 STANDARDS OF REPRESENTATION

All attorneys appearing in dependency proceedings shall meet the following minimum standard of representation:

- a) Attorneys or their agents are expected to meet regularly with clients, including clients who are children, regardless of the age of the child or the child's ability to communicate verbally, to contact social workers and other professionals associated with the client's case, to work with other counsel and the court to resolve disputed aspects of a case without contested hearing, and to adhere to the mandated timelines. The attorney for the child must have sufficient contact with the child to establish and maintain an adequate and professional attorney-client relationship. The attorney for the child is not required to assume the responsibilities of a social worker and is not expected to perform services for the child that are unrelated to the child's legal representation. (Adopted effective July 1, 2002)
- b) The attorney shall thoroughly and completely investigate the accuracy of the allegations of the petition or other moving papers and the Court reports filed in support thereof. This shall include conducting a comprehensive interview with the client to ascertain his or her knowledge of and/or involvement in the matters alleged or reported: contacting social workers and other professionals associated with the case to ascertain if the allegations and/or reports are supported by accurate evidence and reliable information; consulting with and, if necessary, seeking the appointment of experts to advise the attorney or the Court with respect to matters which are beyond the expertise of the attorney and/or the Court; and obtaining such other facts, evidence or information as may be necessary to effectively present the client's position to the Court.
- c) The attorney shall determine the client's interests and the position the client wishes to take in the matter. Except in those cases in which the client's whereabouts is unknown, this shall include a comprehensive interview with the client. If the client is a minor child who is placed out of home, in addition to interviewing the child, the attorney shall also interview with the child's caretaker. The attorney or the attorney's agent shall make at least one visit to the child at the child's placement prior to the jurisdiction hearing. Thereafter, the attorney or the attorney's agent should make at least one visit to the child at the child's placement prior to each review hearing.

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- d) The attorney shall advise the client of the possible courses of action and of the risks and benefits of each. This shall include advising the client of the risks and benefits of resolving disputed matters without the necessity for a hearing and of the necessity for adhering to court mandated time limits.
- e) The attorney shall vigorously represent the client within applicable legal and ethical boundaries. This shall include the duty to work cooperatively with other counsel and the Court, to explore ways to resolve disputed matters without hearing if it is possible to do so in a way which is consistent with the client's interests, and to comply with local rules and procedures as well as with statutorily mandated timelines. (Adopted effective October 1, 1998; Amended effective July 1, 2002)

3.19 PROCEDURES FOR REVIEWING AND RESOLVING COMPLAINTS

Any party to a Juvenile Court proceeding may lodge a written complaint with the Court concerning the performance of his or her appointed attorney in a Juvenile Court proceeding. In the case of a complaint concerning the performance of an attorney appointed to represent a minor, the complaint may be lodged on the child's behalf by the social worker, a caretaker relative or a foster parent.

Each appointed attorney must inform by written notice to his or her adult client of the procedure for lodging complaints with the Court concerning the performance of an appointed attorney. The notice shall be given to the client within 10 days of the attorney's appointment to represent that client. Evidence that a copy of said notice was given or mailed to the client shall be provided to the Court within 10 days of a request therefore from the Court. In the case of a minor client, the notice shall be mailed or given to the current caretaker of the child. If the minor is 12 years of age or older, a copy of the notice shall also be sent or given to the minor.

The Court shall review a complaint within 10 days of receipt. If the Court determines that the complaint presents reasonable cause to believe that the attorney may have failed to act competently or has violated local rules, the Court shall notify the attorney in question of the complaint, shall provide the attorney with a copy of the complaint and shall give the attorney twenty days from the date of the notice to respond to the complaint in writing.

After a response has been filed by the attorney or the time for submission of a response has passed, the Court shall review the complaint and the response if any to determine whether the attorney acted contrary to local rules or has acted incompetently. The Court may ask the complainant or the attorney for additional information prior to making a determination on the complaint.

If, after reviewing the complaint, the response and any additional information, the Court finds that the attorney acted improperly or contrary to the rules or policies of the Court, the Court may reprove the attorney, either privately or publicly, and may, in cases of willful or egregious violations of local rules, issue

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such reasonable monetary sanctions against the attorney as the Court may deem appropriate.

If, after reviewing the complaint, the response and any additional information, the Court finds that the attorney acted incompetently, the Court may order that the attorney practice under the supervision of a mentor attorney for a period of at least six months, that the attorney complete a specified number of hours of training or education in the area in which the attorney was found to have been incompetent, or both. In cases in which the attorney's conduct caused actual harm to his or her client, the Court shall order that competent counsel be substituted for the attorney found to have been incompetent and may, in the Court's discretion, refer the matter to the State Bar of California for further action.

The Court shall notify the attorney and the complaining party in writing of its determination of the complaint. If the Court makes a finding under subdivisions (e) or (f), the attorney shall have 10 days after the date of the notice to request a hearing before the Court concerning the Court's proposed action. If the attorney does not request a hearing within that period of time, the Court's determination shall become final.

If the attorney requests a hearing, the attorney shall serve a copy of the request on the complaining party. The hearing shall be held as soon as practicable after the attorney's request therefore, but in no case shall it be held more than 30 days after it has been requested except by stipulation of the parties. The complainant and the attorney shall each be given at least 10 days notice of the hearing. The hearing may be held in chambers. The hearing shall not be open to the public. The Court may designate a commissioner, referee, judge pro tempore, or any qualified member of the bar to act as hearing officer.

At the hearing, each party shall have the right to present arguments to the hearing officer with respect to the court's determination. Such arguments shall be based on the evidence before the Court at the time the determination was made. No new evidence may be presented unless the party offering such evidence can show that it was not reasonably available to the party at the time that the Court made its initial determination with respect to the complaint. Within 10 days after the hearing, the Court or hearing officer shall issue a written determination upholding, reversing or amending the Court's original determination. The hearing decision shall be the final determination of the Court with respect to the matter. A copy of the hearing decision shall be provided to both the complainant and the attorney. (Adopted effective October 1, 1998; Amended effective July 1, 2002)

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3.20 COURT APPOINTED SPECIAL ADVOCATE AS GUARDIAN AD LITEM

If the court makes the findings as outlined in 3.15, and does not appoint an attorney to represent a child, the court must appoint a Court Appointed Special Advocate (CASA) as guardian ad litem for the child.

- a) The required training of a CASA volunteers is set forth in California Rules of Court 1424
- b) The caseload of a CASA volunteer acting as a guardian ad litem must be limited to 10 cases. A case may include siblings, absent a conflict.
- c) CASA volunteers must not assume the responsibilities of attorneys for children.
- d) The appointment of an attorney to represent a child does not prevent the appointment of a CASA volunteer for that child. (Adopted effective July 1, 2002)

3.21 PROCEDURES FOR INFORMING THE COURT OF THE INTERESTS OF A DEPENDENT CHILD

- a) At any time following the filing of a petition under Welfare and Institutions Code §300 and until juvenile court jurisdiction is terminated, any interested person may advise the Court of information regarding an interest or right of the child which needs to be protected or pursued in other judicial or administrative forums. If the attorney for the child, or a Court Appointed Special Advocate (CASA) acting as a guardian ad litem learns of any such interest or right, the attorney or CASA must notify the Court immediately and seek instructions from the court as to any appropriate procedures to follow.
- b) Notice to the Court may be given by the filing of Judicial Council forms Juvenile Dependency Petition JV-100 or Modification Petition Attachment JV-180 or by the filing of a declaration. The person giving notice shall set forth the nature of the interest or right which needs to be protected or pursued, the name and address, if known, of the administrative agency or judicial forum in which the right or interest may be affected and the nature of the proceedings being contemplated or conducted there.
- c) If the person filing the notice is the counsel for the minor, the motion shall state what action on the child's behalf the attorney believes is necessary, whether the attorney is willing or able to pursue the matter on the child's behalf, whether the association of counsel specializing in practice before that agency or court may be necessary or appropriate, whether the appointment of a guardian *ad litem* may be necessary to initiate or pursue the proposed action, whether joinder of an administrative agency to the Juvenile Court proceedings pursuant to Welfare and Institutions Code section 362 may be appropriate or necessary to protect or pursue the child's interests and whether further investigation may be necessary.

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- d) If the person filing the notice is not the attorney for the child, a copy of the notice shall be served on the attorney for the child, or, if the child is unrepresented, the notice shall so state.
- e) The Court may set a hearing on the notice if the Court deems it necessary in order to determine the nature of the child's right or interest or whether said interest should be protected or pursued.
- f) If the Court determines that further action on behalf of the child is required to protect or pursue any interests or rights, the Court must appoint an attorney for the child if the child is not already represented by counsel, and do one or all of the following:
 - 1) Refer the matter to the appropriate agency for further investigation, and require a report to the court within a reasonable time;
 - 2) Authorize and direct the child's attorney to initiate and pursue appropriate action;
 - 3) Appoint a guardian *ad litem* for the child, who may be the CASA already appointed as guardian *ad litem* or a person who will act only if required for to initiate and pursue appropriate action ; or
 - 4) Take any other action the Court may deem necessary or appropriate to protector pursue the welfare, interests and rights of the child. (Adopted effective October 1, 1998; Amended effective July 1, 2002)

3.22 DISCOVERY IN JUVENILE DELINQUENCY PROCEEDINGS

A. PURPOSES OF THIS RULE

This rule shall be interpreted to give effect to all of the following purposes:

- 1. To promote the ascertainment of truth in juvenile delinquency proceedings by requiring timely discovery prior to the jurisdictional hearing.
- 2. To save court time by requiring that discovery be conducted informally between and among the parties before judicial enforcement is requested.
- 3. To save court time in juvenile delinquency proceedings and avoid the necessity for frequent interruptions and postponements.
- 4. To protect victims and witnesses from danger, harassment, and undue delay of the proceedings.
- 5. To provide that no discovery shall occur in juvenile delinquency proceedings except as provided by this rule, other express statutory provisions, or as mandated by the Constitution of the United States.

B. INFORMATION TO BE DISCLOSED BY PROSECUTION

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The prosecuting attorney shall disclose to the minor or his or her attorney all of the following materials and information, if it is in the possession of the prosecuting attorney or if the prosecuting attorney knows it to be in the possession of the investigating agencies:

1. The names and addresses of persons the prosecutor intends to call as witnesses at the jurisdictional hearing.
2. Statements of the minor.
3. All relevant real evidence seized or obtained as a part of the investigation of the offenses charged.
4. The existence of a felony conviction of any material witness whose credibility is likely to be critical to the outcome of the jurisdictional hearing.
5. Any exculpatory evidence.
6. Relevant written or recorded statements of witnesses or reports of the statements of witnesses whom the prosecutor intends to call at the jurisdictional hearing, including any reports or statements or experts made in conjunction with the case, including the results of physical or mental examinations, scientific test, experiments, or comparisons which the prosecutor intends to offer in evidence at the jurisdictional hearing.
7. Any additional discovery as set forth in California Rules of Court, Rule 1420.

C. DISCLOSURE OF ADDRESS OR TELEPHONE NUMBER OF VICTIM OR WITNESS TO MINOR

1. Except as provided in paragraph 2, no attorney may disclose or permit to be disclosed to a minor, members of the minor's family, or anyone else, the address or telephone number of a victim or witness whose name is disclosed to the attorney pursuant to subdivision (a) of Penal code Section 1054.1 and California Rules of Court, Rule 1420 unless specifically permitted to do so by the court after a hearing and a showing of good cause.
2. Notwithstanding paragraph 1) an attorney may disclose or permit to be disclosed the address or telephone number of a victim or witness to persons employed by the attorney or to persons appointed by the court to assist in the preparation of a minor's case if that disclosure is required for that preparation. Persons provided this information by an attorney shall be informed by the attorney that further dissemination of the information, except as provided by this section, is prohibited.
3. Willful violation of this subdivision by an attorney, persons employed by the attorney, or persons appointed by the court is a misdemeanor.

D. INFORMATION TO BE DISCLOSED BY MINOR

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The minor and his or her attorney shall disclose to the prosecuting attorney:

1. The names and addresses of persons, other than the minor, he or she intends to call as witnesses at the jurisdictional hearing, together with any relevant written or recorded statements of those persons, or reports of the statements of those persons, including any reports or statements of experts made in connection with the case, and including the results of physical or mental examinations, scientific tests, experiments, or comparisons which the defendant intends to offer in evidence at the jurisdictional hearing.
2. Any real evidence which the minor intends to offer in evidence at the jurisdictional hearing.
3. Any Additional discovery as set forth in California Rules of Court, Rule 1420.

E. OBTAINING OF NONTESTIMONIAL EVIDENCE BY PROSECUTION

Nothing in this rule shall be construed as limiting any law enforcement or prosecuting agency from obtaining non-testimonial evidence to the extent permitted by law on the effective date of this section.

F. EXCLUSIVENESS OF PROVISIONS; PROCEDURE PRIOR TO OBTAINING ORDER; ORDER PROHIBITING TESTIMONY OF WITNESS

1. No order requiring discovery shall be made in juvenile delinquency proceedings except as provided in this rule. This rule shall be the only means by which the minor may compel the disclosure or production of information from prosecuting attorneys, law enforcement agencies which investigated or prepared the case against the minor, or any other persons or agencies which the prosecuting attorney or investigating agency may have employed to assist them in performing their duties.
2. Before a party may seek court enforcement of any of the disclosures required by this chapter, the party shall make an informal request of opposing counsel for the desired materials and information. If within 7 calendar days the opposing counsel fails to provide the materials and information requested, the party may seek a court order compelling disclosure.

Upon a showing that a party has not complied with Rule 3.22 B or D and that the moving party complied with the informal discovery procedure provided in this rule, a court may make any order necessary to enforce the provisions of this rule, including, but not limited to, immediate disclosure, contempt proceedings, delaying or prohibiting the testimony of a witness or the presentation of real evidence, continuance of the matter, or any other lawful order or sanction. Further, the court may consider any failure or

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refusal to disclose and of untimely disclosure in assessing the credibility of the evidence offered by the party not in compliance with this rule.

3. The court may also apply any sanction for failure to comply as set forth in California Rules of Court, Rule 1420 (j).

G. DISCLOSURE OF WORK PRODUCT OR PRIVILEGED INFORMATION

Neither the minor nor the prosecuting attorney is required to disclose any materials or information which are work product as defined in subdivision (c) of Section 2018 of the Code of Civil Procedure, or which are privileged pursuant to an express statutory provision, or are privileged as provided by the Constitution of the United States.

H. TIME FOR DISCLOSURES; MOTION FOR DENIAL OR REGULATION OF DISCLOSURES

1. The disclosures required under this chapter shall be made at least 7 calendar days prior to the jurisdictional hearing, unless good cause is shown why a disclosure should be denied, restricted, or deferred. If the material and information becomes known to, or comes into the possession of, a party within 7 days of the jurisdictional hearing, disclosure shall be made immediately, unless good cause is shown why a disclosure should be denied, restricted, or deferred. "Good cause" is limited to threats or possible danger to the safety of a victim or witness, possible loss or destruction of evidence, or possible compromise of other investigations by law enforcement.
2. Upon the request of any party, the court may permit a showing of good cause for the denial or regulation of disclosures, or any portion of that showing, to be made in camera. A verbatim record shall be made of any such proceeding. If the court enters an order granting relief following a showing in camera, the entire record of the showing shall be sealed and preserved in the records of the court, and shall be made available to an appellate court in the event of an appeal or writ. In its discretion, the juvenile court may after jurisdictional hearing unseal any previously sealed matter for appeal or writ review.

I. REQUIRED IDENTIFICATION FOR INTERVIEW

1. No prosecuting attorney, attorney for the minor, or investigator for either the prosecution or the minor shall interview, question, or speak to a victim or witness whose name has been disclosed by the opposing party pursuant to Section B or D without first clearly identifying himself or herself, identifying the full name of the agency by whom he or she is employed, and identifying whether he or she represents, or has been retained by, the prosecution or the minor. If the interview takes place in person, the party shall also show the victim or witness a business card, official badge, or other form of official identification before commencing the interview or questioning.

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2. Upon a showing that a person has failed to comply with this section, a court may issue any order authorized by Section F.

J. CHILD PORNOGRAPHY EVIDENCE

1. Except as provided in paragraph 2 below, no attorney may disclose or permit to be disclosed to a minor, members of the minor's family, or anyone else copies of child pornography evidence, unless specifically permitted to do so by the court after a hearing and a showing of good cause.
2. Notwithstanding paragraph 1 above, an attorney may disclose or permit to be disclosed copies of child pornography evidence to persons employed by the attorney. (Adopted effective July 1, 2004)

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APPENDIX

For Court Use Only.

/ _____

**SUPERIOR COURT OF CALIFORNIA
IN AND FOR THE COUNTY OF MONTEREY
JUVENILE DIVISION**

CERTIFICATION OF COMPETENCY OF COUNSEL C.R.C. 1438(a)

Name: _____

State _____

Bar Number: _____

Office Address: _____

Telephone: _____

I am an attorney at law licensed to practice in the State of California. I hereby certify that I meet the minimum standards for practice before a Juvenile Court set forth in California Rules of Court, rule 1438(a), and Monterey County Superior Court local rule, and I have completed the minimum requirements for training, education and/or experience as set forth below.

Training and Education: (Attach copies of MCLE certificates or other documentation of attendance.)

Court Title	Date Completed	Hours / Provider
-------------	----------------	------------------

_____	_____	_____
_____	_____	_____
_____	_____	_____

Juvenile Dependency Experience: (Attach additional pages if necessary.)

Case #	# Contested Hearings	Date of Last Appearance	Party Represented
--------	-------------------------	----------------------------	----------------------

_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____

Date: _____

Signature

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APPENDIX

3.04 CALENDAR

JUVENILE DELINQUENCY:

a) Welfare and Institutions Code, section 602:

First appearances.....	Monday through Friday	8:30 a.m.
Motions.....	Monday through Friday	8:30 a.m.
Dispositions & Other Short Matters.....	Monday through Friday	9:00 a.m.

b) Jurisdictional hearings

of 602 cases	Monday through Friday	1:30 p.m.
Penal Code 1538.5.....	Monday through Friday	8:30 a.m.
Dennis H. hearings.....	Monday through Friday	10:30 and 11 a.m.

c) Detention first appearance hearings... Monday through Friday 8:30 a.m.

JUVENILE DEPENDENCY:

All Welfare and Institutions Code 300 proceedings...	Friday	9:30 a.m.
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CHAPTER 4

PROBATE DEPARTMENT

PREAMBLE

The following rules should be adhered to with respect to the majority of matters presented to the court. In exceptional circumstances and for good cause shown, the court will consider individual exceptions to these rules where not prohibited from doing so by statutory or case law.

ADMINISTRATION AND ORGANIZATION

4.01 PROBATE JUDGE

The Probate Judge shall be designated by the Presiding Judge. (Adopted effective October 1, 1998)

4.02 OTHER PROBATE LAW AND COURT RULES

The provisions of the within chapter are not intended to embody all law or proceedings applicable to the situations described herein. Furthermore, while reference may be made to statutory and case law current at the time these Rules were revised, counsel are advised to take such steps as may be necessary to become familiar with the law in existence at the time their matters are before the Court. Unless otherwise inconsistent with this chapter as indicated herein, all other Monterey County Superior Court Local Rules are applicable to Probate Cases. (Adopted effective October 1, 1998)

4.03 SIGNATURE OF JUDGE

Any order or document on a calendared matter requiring the signature of the judge must first be submitted to a Research Attorney for examination. (Adopted effective October 1, 1998)

4.04 MATERIAL TO BE INCLUDED IN PROBATE ORDERS

- a) Complete in Themselves. Orders shall contain the name of the judge presiding, the date of hearing and the department. All orders or decrees in probate matters must be complete in themselves. They shall set forth, with the same particularity required of judgments in civil matters, all matters actually passed on by the Court, the relief granted, the names of any persons affected, the descriptions of any property affected and the amounts of any money affected. Probate orders should be so drawn that their general effect may be determined without reference to the petition on which they are based. Orders may reference attached exhibits where use of the exhibits is meant to safeguard against typographical errors, for example where lengthy property descriptions are involved. Exhibits must reference the case name

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and number. The preferred practice is to incorporate the Exhibit into the Order and provide for a judicial signature element at the end of the Exhibit.

- b) Orders Settling Accounts. In orders settling accounts it is proper to use general language approving the account, the report and the acts reflected therein. It is not sufficient in any order to recite merely that the petition as presented is granted. Orders settling accounts must also contain a statement as to fees approved, fees waived, and the balance of the estate on hand, specifically noting the amount of cash included. (Adopted effective October 1, 1998; Amended effective January 1, 2002)

4.05 APPLICATIONS FOR EX PARTE ORDERS, CONTENT OF ORDER

Applications for ex parte orders must be accompanied by a separate order, complete in itself. It is not sufficient for such an order to provide merely that the application has been granted.

Since no testimony is taken in connection with ex parte petitions, the application must contain sufficient facts to support granting the prayer.

Please contact the Superior Court Clerk's office to determine whether an appearance is required to present an ex parte petition and order for a judge's signature. (Adopted effective October 1, 1998; Amended effective January 1, 2001; Amended effective July 1, 2001)

4.06 TELEPHONE CALLS TO RESEARCH ATTORNEY

The Research Attorneys are not required to provide answers to general legal and/or hypothetical questions. General legal questions or questions involving hypothetical fact situations, will be discussed at the discretion of the Research Attorney. Such discussions may not be cited as authority for actions subsequently taken. Research Attorneys should not be considered an alternative to basic legal research. (Adopted effective October 1, 1998)

4.07 PROBATE CALENDAR

Probate matters are heard in Monterey at 10:30 a.m. on Fridays. If Friday falls on a courthouse holiday, Probate shall be heard on the preceding judicial day at the discretion of the Presiding Judge. Matters are calendared through the Superior Court Clerk's office.

Normally probate matters are heard on the documents and declarations submitted. If testimony is required or the hearing will require more than twenty (20) minutes, arrangements should be made for a special setting. Special settings are set by way of properly calendared motions.

If it shall appear, when a matter is called, that it will require more than twenty (20) minutes, the Court may reset the matter to another time and/or day.

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(Adopted effective October 1, 1998; Amended effective January 1, 2001; Amended effective July 1, 2001; Amended eff. July 1, 2004)

4.08 SUBMITTED CALENDAR

Certain probate, guardianship, and conservatorship proceedings may be submitted to the Probate Court without the necessity of a Court appearance by the petitioner in pro per or by the attorney for the petitioner. The petitioner or attorney for petitioner may telephone the Superior Court Research Attorney at (831) 647-5836, after 4:00 p.m. on the day preceding the scheduled hearing date to ascertain whether the Probate Judge's notes indicate that an appearance is required. If the research attorney is not available at the time of your call, every effort will be made to return your call prior to the scheduled hearing. However, due to the Court's schedule, this may not always be possible. (Adopted effective October 1, 1998; Amended effective January 1, 2001; Amended eff. July 1, 2004)

4.09 PROPOSED ORDERS—TIMING, FORM AND CONTENT

- a) With the exception of sales of property, Orders After Hearing in all uncontested matters must be submitted no later than five (5) working days prior to the hearing date.
- b) Where matters have been continued, new Orders reflecting the continued hearing date must be submitted no later than five (5) working days prior to the hearing date.
- c) The attorney preparing a formal order following a contested Court hearing must provide opposing counsel an opportunity to review and approve a proposed order as to form and content before submitting the order to the Court for signature. Objections to form or content relating to orders prepared by counsel for signature by the Court must be in pleading form. Letter objections will be disregarded.
- d) Orders must be separate documents. Orders may not be included in the body of a Petition.
- e) Orders may not include a blank judicial signature page following the text on an Order. (Adopted effective October 1, 1998; Amended effective July 1, 1999; Amended effective July 1, 2001; Amended effective January 1, 2002)

PLEADINGS

4.10 CAPTION OF PETITIONS AND PLEADINGS

With the exception of Judicial Council Forms, all separately filed Pleadings must include in the caption, the date, time, and place of hearing. Separately filed pleadings include later filed Declarations responsive to inquiries made by the Court in advance of the Hearing date.

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The Calendar Department of the Superior Court Clerk's Office is not required to read the body of the petition or the prayer to determine the adequacy of the pleading. The caption of petitions must be all-inclusive as to the relief sought in the petition so that the matter may be properly calendared and posted, and filing fees, if any, determined. If any part of the estate is to be distributed to a trust, the caption must so indicate. To facilitate proper calendaring and notice, the following captions should be used where appropriate. The list is not meant to be all-inclusive.

- Petition for Probate of Will--Letters Testamentary
- Petition for Probate of Will and Codicil—Letters Testamentary
- Petition for Probate of Will-Letters of Administration With-Will-Annexed
- Petition for Probate of Will and Codicil--Letters of Administration-with-Will-Annexed
- Contest of Will
- Petition for Letters of Administration
- Petition for Special Letters of Administration
- Petition for Letters Testamentary
- Petition for Appointment of Guardian of Person and/or Estate
- Petition for Appointment of Conservator of Person and/or Estate
- Petition for Appointment of Guardian With Special Powers
- Petition for Appointment of Conservator With Special Powers
- Petition Confirming Sale of Real Property
- Petition Approving Sale of Personal Property
- Petition Confirming Sale of Personal Property
- Petition Confirming Sale of Real and Personal Property as a Unit
- Account/Report
- Account, Report and Fees
- Account, Report, Fees and Reimbursement
- Account, Report, Fees and Instructions
- Account, Report, Fees and Increase/Reduction of Bond
- Petition for Authority to Defer Accounting
- Account, Report, Fees and Preliminary Distribution
- Account, Report, Fees and Preliminary Distribution (trust)
- Final Account, Report, Fees and Final Distribution
- Final Account, Report, Fees, Extraordinary Fees and Final Distribution
- Final Account, Report, Fees, Acceptance of Resignation and Discharge
- Final Account, Report, Fees, Restoration to Capacity and Discharge
- Final Account, Report, Fees and Distribution (trust)
- Final Account, Report and Final Distribution
- Final Account, Report, Fees (Insolvent Estate)
- Final Account, Report, Fees, Extraordinary Fees (Insolvent Estate)
- Final Account, Report, Fees, Extraordinary Fees, Approval of Preliminary Distribution and for Final Distribution
- Final Report on Waiver of Accounting and Final Distribution
- Final Report on Waiver of Accounting, Fees and Final Distribution
- Final Report on Waiver of Accounting, Fees, Extraordinary Fees and Final Distribution
- Petition for Preliminary Distribution
- Petition for Preliminary Distribution, Fees

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- Petition to Compromise Claim (P.C. section 3500)
- Petition for Authority to Borrow Money and Execute Trust Deed
- Petition for Authority to Expend Funds
- Petition for Authority to Lease Realty
- Petition for Authority to Compromise Claim
- Petition to Assign Estate
- Petition to Determine Heirship and Entitlement to Distribution
- Petition to Determine Interest and Entitlement to Distribution
- Petition to Establish Death of Joint Tenant
- Petition to Establish Death of Life Tenant
- Petition to Terminate Proceedings and Discharge

(Adopted effective October 1, 1998; Amended effective July 1, 2001;
Amended effective January 1, 2002)

**4.11 PLEADINGS MUST BE SIGNED BY REPRESENTATIVE, TRUSTEE,
GUARDIAN OR CONSERVATOR**

An executor, administrator, trustee, guardian or conservator is an officer acting pursuant to Court order. All accounts, petitions and other pleadings made in an official capacity must be signed and verified by such officer. The code provision allowing attorneys to verify certain pleadings in civil matters is not applicable to probate proceedings when the representative is acting in his or her official capacity. (Adopted effective October 1, 1998)

4.12 AMENDMENT OF PLEADINGS

- a) Amended/Amendment to. An amended pleading, or an "amendment to" a pleading, as distinguished from a "supplement," requires the same notice (including publication) as the pleading which it amends. When a Judicial Council Form was used for the original pleading, the amended pleading shall also use a Judicial Council Form on which the word "Amended" is added to the caption.
- b) Supplemental Pleading. A supplement to a petition should be captioned "Supplement To..." A properly captioned supplement does not require additional notice, but service of a copy of the supplement is still required in appropriate cases. In general, a supplement provides additional or clarifying information in support of the prayer of a petition.

Judicial Council Forms may be used to "amend" pleadings. They should not be used as an "Amendment To..." or "Supplement To..." a pleading, as these forms are complete in themselves. (Adopted effective October 1, 1998)

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4.13 FILING DEADLINE

The filing deadline for any pleading is the last day upon which the pleading may be served.

When statutes provide that papers may be filed within three (3) calendar days of the hearing, service on opposing counsel must be by personal delivery (or by FAX when permitted by Rule 2008 of the California Rules of Court). (Adopted effective October 1, 1998; Amended effective January 1, 2001)

STIPULATIONS

4.14 CONTINUANCES

Matters may not be continued by the petitioning party or by stipulation of counsel without authorization from the Court which should be sought through the Court's Research Attorney if set for hearing within five (5) working days.

Matters which have been set by the Court shall not be continued at any time without authorization from the Court. (Adopted effective October 1, 1998)

NOTICES, PUBLICATION AND SERVICE OF CITATIONS

4.15 NOTICES GENERALLY

Notice requirements with respect to particular petitions or matters are set forth elsewhere in this chapter. Counsel must consult the specific rules relating to such petitions or matters and the relevant statutes to assure proper notice is given. (Adopted effective October 1, 1998; Amended effective January 1, 2001)

4.16 ADDITIONAL NOTICE REQUIREMENTS

- a) When Additional Notice is Required. Under the provisions of Probate Code section 1202, the Court may require additional notice in any matter. Ordinarily, such notice will be required whenever it appears that the interests of any person may be adversely affected by the determination of the issues raised by the pleadings. The Court will require notice in such cases to include not only the time and place of hearing but also a summary of the matters to be determined, or it may require a copy of the petition to be served with the notice.
- b) Termination of Guardianship and Conservatorship. This rule also applies in termination of guardianships and conservatorships. Notice and a copy of the petition must be given to a former minor, or a former conservatee on the settlement of the final account. Notice and a copy of the petition must also be given to the representative of the estate of a deceased ward or conservatee. (Adopted effective October 1, 1998)

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APPOINTMENT OF EXECUTORS AND ADMINISTRATORS

4.17 NOTICE RE: SPECIAL LETTERS

Petitions for Special Letters will ordinarily not be granted without notice to the surviving spouse, the person nominated as executor, and any other person who on examination of the petition appears to be equitably entitled to notice. In making the appointment, preference is given to the person entitled to letters testamentary or of administration. If a proper petition has been filed and it appears that a bonafide contest exists, the Court will consider the advisability of appointing a neutral person or corporation as Special Administrator. (Adopted effective October 1, 1998; Amended effective January 1, 2001)

4.18 ALLEGATIONS IN PETITIONS RE: HEIRS OR BENEFICIARIES

- a) Nominated Trustee(s). The nominated trustee(s) of a trust created by a will must be listed as a devisee or legatee. If the trustee is also the estate representative or no trustee has been appointed, the individual trust beneficiaries must also be set forth and served with notice of hearing as set forth in Probate Code section 1208.
- b) Post-deceased Heirs, Devisees or Legatees. If an heir, devisee or legatee dies after the decedent and a personal representative has been appointed for the heir, devisee or legatee, the heir, devisee or legatee should be listed in care of the name and address of the personal representative. If no personal representative has been appointed, the heir, devisee or legatee should be listed as deceased and notice should be given to the heirs, legatees, or devisee of the post deceased heir. In either case, the date of death should be included.
- c) Contingent Heirs. All contingent heirs and legatees must be listed in the petition and are entitled to receive notice of the hearing. (Adopted effective October 1, 1998; Amended effective January 1, 2001)

4.19 SUBSEQUENT PETITIONS FOR PROBATE

Any other wills or codicils not specifically mentioned in the original petition must be presented to the Court by way of an amended petition or a second petition, and a new notice thereon must be published. Attaching a copy of any instrument without specific reference to it in the petition is insufficient (Est. of Olson (1962) 200 Cal.App.2d 234.) Where a will has been previously admitted and a Petition for Letters Testamentary or of Letters of Administration With-Will-Annexed is filed, the same notice is required as on the original petition. (Adopted effective October 1, 1998)

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4.20 NOTICE BY MAIL -- BY WHOM GIVEN

- a) Petitioner to Give Notice. Probate Code section 1041 requires the clerk to cause a hearing to be set on petitions, accountings, etc. The burden is upon the petitioner, or his/her attorney, to give notice of the hearing, or cause it to be given, and to file the proper proof of service. (See Probate Code sections 1041, 8003, 8100, 8110.)
- b) Notice to a Minor. Notice to a minor heir or minor beneficiary shall be sent to any legally-appointed Guardian, and if none, to any adult having legal custody of such minor. (Adopted effective October 1, 1998)

4.21 HEIRS WITHOUT KNOWN ADDRESSES

The Court will require an affidavit or declaration stating specifically what efforts were made to locate an heir, devisee or legatee whose whereabouts is unknown before it will accept notice mailed to him or her at the County Seat under Probate Code section 1220. Addressed as follows:

General Delivery
Post Office
Salinas, CA 93902

(See Probate Code section 1220(d) and Judicial Council comments on Code of Civil Procedure section 415.50 as to what efforts are necessary.) (Adopted effective October 1, 1998)

4.22 CONTINUANCE TO PERMIT FILING OF WILL CONTEST

If an interested party appears in person or by attorney when a petition for the probate of will is called for hearing and declares that he/she desires to file a written contest, the Court will ordinarily continue the hearing with the understanding that whether or not a contest is actually on file at the new hearing date, the hearing will nevertheless proceed. (Adopted effective October 1, 1998)

4.23 BONDING OF PERSONAL REPRESENTATIVES

- a) Waiver of Bond in Will. The fact that bond has been waived in the will should be alleged. Bond may be required for an executor who resides outside California even though waived in the will.
- b) Waiver of Bond Ineffective. Where bond has been waived as to specifically named individuals and those individuals do not act, the waiver of bond is ineffective.
- c) Two or More Executors. If the will names two or more executors but all do not wish to serve or cannot serve in such capacity and the will does not specifically waive bond as to less than the number specified, a bond may be required of those who do qualify.

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- d) **Separate Bonds for Individuals.** A corporate representative cannot assume responsibility for the acts of any individual co-representative. An individual must provide separate bond as required by law unless the assets are to be held solely by the corporate co-representative, pursuant to Court order.
- e) **Increase or Reduction of Bond.** When the bond must be increased, the Court favors the filing of an additional bond rather than a substitute bond; when the bond may be reduced, the Court favors the use of an order reducing the liability on the existing bond rather than the filing of a substitute bond. All petitions for reduction of bond must be noticed and set for hearing.
- f) **Duty to Petition to Increase.** It is the duty of an estate representative, or counsel, if counsel becomes aware of facts evidencing that the bond should be increased, to petition the Court for an ex parte order increasing the bond to the total appraised value of personal property on hand plus one year's estimated annual income from real and personal property. See also Rule 4.43 for required statement of counsel on "Inventory and Appraisal".
- g) **Description of Bonds in Accounts.** In any account, other than a final account, where bond has been posted, there shall be included a separate paragraph setting forth the total bond(s) posted, the date posted, the appraised value of personal property on hand plus the estimated annual income from real and personal property, and a statement of any additional bond required.
- h) **Bond for Sale of Real Property.** In all cases where independent powers to sell real property are granted (i.e., full power), the Court will require a bond covering the value of the real property, unless bond is statutorily waived. When an additional bond is required upon an order confirming sale of real property the additional bond should be submitted with the proposed order. The order will not be signed until the additional bond is filed. (Adopted effective October 1, 1998; Amended effective January 1, 2001; Amended effective July 1, 2001)

4.24 BOND FOR SPECIAL ADMINISTRATORS

Pursuant to Probate Code section 8481(b), unless sufficient allegations are set forth to warrant waiver, the Court will require a special administrator to post bond. (Adopted effective October 1, 1998)

4.25 ISSUANCE OF LETTERS

- a) **Duties and Liabilities Form.** To assure that his/her duties are understood, each Personal Representative of a decedent's estate must file with the Court, before Letters are issued, "Duties and Liabilities of Personal Representative" signed by him/her. This form is confidential and is sealed before being placed in the Court file.

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- b) Filing Bond. If a bond has been ordered, it must have been previously filed or must be presented along with the Letters to be issued. (Adopted effective October 1, 1998)

4.26 DECLINATIONS AND CONSENTS TO SERVE

- a) Declination of Named Executor. It is insufficient merely to allege that the person named in the decedent's will as executor thereof declines to act as such. A written declination to act, verified under penalty of perjury (Code of Civil Procedure section 2015.5) by such person, must be filed with the Court.
- b) Two or More Executors. If a petition for letters to be issued to two or more executors is filed, and one or more of the named executors is not a petitioner, each non-petitioning executor must file a consent to act, verified under penalty of perjury. (Adopted effective October 1, 1998)

4.27 MULTIPLE REPRESENTATIVES

When multiple personal representatives are appointed, Letters shall be issued jointly to all of them, and not separately to any of them, unless specifically permitted by Court order. (Adopted effective October 1, 1998)

PETITIONS TO SET ASIDE SPOUSAL PROPERTY

4.28 SPOUSAL PROPERTY PETITIONS

- a) Probate Referee. Appointment of a probate referee is optional in accordance with the Probate Code.
- b) Wills. If decedent died testate, a copy of the Will must be attached to the petition.
- c) Proof of Community Property Claim. Where there is no Will and no written Community Property Agreement, the petition to determine and/or confirm community property must contain the following allegations:
 - 1) Date and place of marriage.
 - 2) Whether or not decedent owned any real or personal property on date of marriage. If so, describe and give approximate values.
 - 3) Whether or not decedent ever received any property after date of marriage by gift, bequest, devise, decent, proceeds of life insurance or joint tenancy survivorship. If so, describe and give approximate values and date of receipts.
 - 4) If any property was received by decedent under 3 above, whether or not it is still a part of this estate. If so, identify.
 - 5) Any additional facts upon which the claim of community property is based.

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- 6) If the claimed community character of the property is based on any document, a photocopy of that document, showing signatures, should be attached to and authenticated by the petition or by a supporting affidavit or declaration. (Adopted effective October 1 1998)

4.29 PROVISION RE: SURVIVORSHIP

If a spouse's right to take under a will is conditioned on survival for a specified period of time, no property will be set aside or confirmed to the spouse until the expiration of the survivorship period. (Adopted effective October 1, 1998)

INDEPENDENT ADMINISTRATION

4.30 DISTRIBUTION UNDER ACT

- a) Schedule of Claims. In any petition for distribution, a schedule of claims must be included as part of the petition, showing the name of the claimant, amount claimed, date presented, date allowed, the amount allowed and if paid, the date of payment. As to any claims rejected, the date of rejection must be set forth, and the original of the notice of rejection with affidavit of mailing to the creditor must be on file. The notice of allowance should not be filed, unless the creditor is the personal representative and/or counsel for the estate.
- b) Preliminary Distribution. Although a preliminary distribution may be made without an accounting, sufficient facts must be set forth in the petition to allow the Court to ascertain that the estate is solvent. If the Court has questions concerning the propriety of a preliminary distribution, the Court may require an accounting.
- c) Description of Independent Acts. In any petition for distribution, all independent acts taken without prior Court approval shall be set forth and described, and an allegation made that the 15-day notice of proposed action was duly served and that no objections were received or that notice was not required. The original "Notice of Proposed Action", with attached affidavit of mailing shall be on file with the Court. If certain acts have been properly reported in a prior petition for distribution, and notices filed, they need not be reported again. (Adopted effective October 1, 1998)

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PETITIONS FOR INSTRUCTIONS GENERALLY

4.31 LIMITATIONS ON USE OF PETITIONS FOR INSTRUCTIONS

- a) Available Only Where No Other Procedure Provided. The use of petitions for instructions by executors or administrators pursuant to Probate Code section 9611 is limited to those matters where no other or different procedure is provided by statute.
- b) Specification of Instructions. The petitioner shall set forth in the petition and prayer the specific instructions which petitioner believes the Court should give, rather than asking the Court to select among a choice of options.
- c) No Instruction as to Distribution. The Court is without power to "instruct" as to the manner in which an estate should be distributed. Such direction can only be furnished on a petition for distribution or by a petition to determine heirship. (Estate of Thramm (1945) 67 Cal App. 2d 657; Estate of Hoffman (1968) 265 Cal. App. 2d 135.) (Adopted effective October 1, 1998)

4.32 PETITIONS TO DETERMINE TITLE TO REAL OR PERSONAL PROPERTY PURSUANT TO PROBATE CODE SECTION 9860.

- a) Caption. Such petitions shall be captioned in such a manner as to alert the clerk that the petition is one filed pursuant to Probate Code sections 9860 et seq., so the clerk can assure proper posting and setting for the hearing.
- b) Notice of Hearing. The notice of hearing must contain a description of the property to which the petition pertains sufficient to give adequate notice thereof to any party who might be interested in the property, including, with respect to real property, the street address of the property, or if none, a description of the location of the property. Thirty (30) day notices of hearing are required.
- c) "Answer." All notices of hearing given on such petitions must contain a statement advising that any person interested in the property, which is the subject of the petition, may file an answer to the petition. The Court prefers that an answer or answers be filed to assist the Court in its trial of the issues. (Adopted effective October 1, 1998)

CREDITORS' CLAIMS

4.33 FILING, APPROVAL, REJECTION AND PAYMENT OF CLAIMS

- a) Use of Forms. Creditor's claim forms are available for use by claimants and should be used to avoid any ambiguity as to whether or not a claim has in fact been filed within the statutory period. Notice to the estate of a debt must be given in the form of a claim filed as a demand against the estate and in a form sufficient to apprise the representative of the estate of the nature of the claim or demand. (*Nathanson v. Superior Court* (1974) 12 Cal. 3d 355.)

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Creditors' claims must be on the Judicial Council Form, filed with the Court, and mailed to the personal representative by the creditor. The name and address of the attorney for the estate should appear on the claim.

- b) Approval and Rejection. All claims filed must be acted on by the representative. It is the duty of the attorney for the representative to see that all claims filed are ultimately allowed or rejected on the proper Judicial Council Form. (Adopted effective October 1, 1998; Amended effective July 1, 2004)

4.34 PAYMENT OF INTEREST ON FUNERAL AND INTERMENT CLAIMS

When accrued interest has been paid in connection with the delayed payment of claims for the reasonable cost of funeral expenses, a specific allegation must be made in the report accompanying the account in which credit for such payment has been taken. The allegation shall set forth reasons for any delay in making payment. The Court will not allow credit for payment of interest where the delay in payment of the claims is not justified by the facts set forth.

Interest on funeral and interment creditors' claims will only be allowed as provided by Health and Safety Code section 7101, which provides that interest is allowed commencing 60 days after the date of death. (Adopted effective October 1, 1998)

SALES

4.35 PUBLISHED NOTICE FOR SALE OF REAL ESTATE

- a) Required Notice. Unless a will specifically grants an executor, as distinguished from an administrator with will annexed, the authority to sell without notice (Probate Code section 10303), a publication of notice of sale of real property is required.
- b) Content of Notice. The notice of sale of real property must substantially comply in its content with the following example:

"NOTICE IS HEREBY GIVEN that, subject to confirmation of this Court on (insert date, time and Department), or thereafter within the time allowed by law, the undersigned as (administrator or Executor) of the Estate of the above named decedent, will sell at private sale to the highest net bidder, on the terms and conditions hereinafter mentioned, all right, title, and interest that the estate has acquired in addition to that of the decedent at the time of death, in the real property located in Monterey County, California, as follows:

(Insert Legal Description of Property here.)

APN:

This property is commonly referred to as (insert address here) and includes (insert any fixture included in the price).

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The sale is subject to current taxes, covenants, conditions, restrictions, reservations, right of way and easements of record, with any encumbrances of record to be satisfied from the purchase price.

The property is to be sold on an "as is" basis, except for title.

An offer on the property in the total amount of (insert amount of bid) has been accepted by the (insert Administrator or Executor) and a REPORT OF SALE AND PETITION FOR ORDER CONFIRMING SALE OF REAL PROPERTY has been filed in these proceedings, which Report and Petition have been set for hearing on (insert hearing date) and notice made to all interested parties. THE PURPOSE OF THIS NOTICE IS TO INVITE BIDS OVER THE ACCEPTED OFFER, in accordance with the provisions of California Probate Code section 10311. By statute, the initial overbid must be in the amount of (insert First Overbid amount).

Overbids are invited for this property and must be in writing and presented on (insert Court confirmation hearing date) at 10:30 a.m. in Department (insert department no.) of the Superior Court of the State of California, for the County of Monterey, 1200 Aguajito Rd., Monterey, California. Bid forms may be obtained from the attorney for the (Administrator or Executor) at the address shown hereinabove or at the Superior Court on the morning of the hearing.

The property will be sold on the following terms (insert all applicable terms).

The undersigned reserves the right to refuse to accept any bids.

- c) Time. If notice of sale is published, any sale must be in accordance with its terms. If a petition for confirmation of sale is filed alleging the sale took place prior to the date stated in the published notice, the sale cannot be confirmed and new notice of sale must be published. Pursuant to Probate Code section 10308, any petition for confirmation of sale must allege that the sale was made within thirty (30) days prior to the date on which the petition was filed. The Court requires that the specific date of sale be alleged in the return of sale and petition for its confirmation. If a petition for confirmation of sale of real property is filed prior to the date of sale specified in the notice, the Court cannot announce the sale on the date set for hearing, but must deny confirmation without prejudice to a new sale after another notice has been given as prescribed by law.
- d) Terms of Sale. The published notice of sale of real property constitutes a solicitation for offers. The terms of the solicitation must be substantially similar to the terms of the accepted offer that is the subject of the Report of Sale and Petition for Order Confirming Sale of Real Property. Published terms of the solicitation cannot be more onerous than the terms of the accepted offer.
- e) Defect in Notice. If an executor publishes a notice of sale of real property and proceeds with that sale and later a technical defect appears, this defect cannot be cured by the executor's power of sale given in the will. The

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publication constitutes an election by the executor to sell by means of publication of notice. (Adopted effective October 1, 1998; Amended effective July 1, 2001; Amended effective January 1, 2002)

4.36 SALE OF REAL PROPERTY

- a) Contract for Sale. The Real Estate Purchase Agreement or other contract of sale shall be attached to the Report of Sale and Petition for Order Confirming Sale of Real Property.
- b) Appearances of Counsel. In petitions for confirmation of sales of real estate and for sales of personal property where bidding is authorized, the Court will not proceed with the confirmation of the sale in the absence of the attorney, except in those cases where the personal representative, guardian or conservator is present and requests that the sale proceed.
- c) Sale Contingencies. Except in exceptional circumstances, all contingencies contained within the Real Estate Purchase Agreement, with the exception of Court Confirmation itself, shall be removed prior to the date of the confirmation hearing. Before the sale is confirmed, counsel shall state for the record that this requirement has been satisfied. Where exceptional circumstances exist to justify a waiver of this requirement, counsel will obtain ex parte authorization to proceed, prior to filing the petition.
- d) Continuances. Sale confirmations will be continued only under the most exceptional circumstances. A motion for continuance must be made in open Court.
- e) Probate Code §10398, requires that notice be given "to the purchasers named in the petition..." (Adopted effective October 1, 1998; Amended effective January 1, 2001)

4.37 EXCLUSIVE LISTINGS FOR THE SALE OF REAL PROPERTY

Where full independent powers have not been granted, Probate Code section 10150 permits a representative to grant an exclusive listing for a period of not to exceed ninety (90) days after obtaining the permission of Court. To obtain such permission, the representative must file an ex parte petition setting forth, in detail, the property to be sold, the broker to be employed, the terms of the exclusive listing agreement and the factual reasons why such agreement is necessary and advantageous to the estate. A bare statement of "necessity and advantage" will not suffice.

In all cases, the ex parte order shall provide that a reasonable broker's commission, if any, will be determined by the Court at the time of confirmation of sale. (Adopted effective October 1, 1998)

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4.38 BOND ON SALE OF REAL ESTATE

Petitions for confirmation of sale of real estate shall set forth the amount of bond in force at the time of sale and the amount of property in the estate which should be covered by bond (as provided in Probate Code Section 8482) at the close of escrow. If no additional bond is required, or if bond is waived, that fact must be alleged. A secured promissory note taken as part of the consideration is personal property and an additional bond must be fixed in the amount of such note plus whatever cash is paid. If additional bond is ordered, it must be filed prior to obtaining the Court's signature on the order confirming sale. (Adopted effective October 1, 1998)

4.39 BROKER'S COMMISSIONS - GENERAL RULE

- a) The order confirming sale must show the total commissions allowed and any allocation agreed upon between brokers.
- b) Upon confirmation of the sale of improved real property, the Court will not allow a broker's commission in excess of six percent (6%), unless justified by exceptional circumstances. A commission of up to ten percent (10%) may be allowed for the sale of raw land.
- c) A commission exceeding the normal schedule will be allowed only under the most unusual circumstances. Whenever possible, the written agreement of the affected beneficiaries should be obtained.
- d) A broker bidding for his own account is not entitled to receive or share in a commission. (Estate of Toy (1977) 72 Cal.App.3d 392) (Adopted effective October 1, 1998)

4.40 DISPUTES ABOUT BROKERS' COMMISSIONS

Normally disputes concerning broker's commissions will be referred to the appropriate Board of Realtors for arbitration. (Adopted effective October 1, 1998)

4.41 TANGIBLE PERSONAL PROPERTY

Commissions on sales of tangible personal property will be allowed only to individuals holding a broker's license authorizing them to deal in the type of property involved. A commission will be allowed on the original bid only when the commission is requested in the return of sale. When there is an overbid in Court, a commission may be allowed to the successful broker, and, if the original bid was subject to a commission, apportionment between the brokers will be made according to the same rules as prescribed for real estate sales. The amount of the commission is within the court's discretion and will not ordinarily exceed a total of 10% of the sale price. (Adopted effective October 1, 1998)

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4.42 SALE OF SPECIFICALLY DEVISED OR BEQUEATHED PROPERTY

On a sale of specifically devised or bequeathed real or personal property, 15 days notice of time and place of hearing of the return of sale must be given to the devisee or legatee, unless his/her consent to such sale is filed with the Court. (Adopted effective October 1, 1998)

INVENTORY, ACCOUNTS AND REPORTS

4.43 "INVENTORY AND APPRAISAL" TO SHOW SUFFICIENCY OF BOND

The "Inventory and Appraisal" filed with the clerk shall contain a statement, signed by the attorney, indicating whichever of the following is applicable:

- Bond waived.
- Bond filed \$_____insufficient.
- Bond filed \$_____sufficient.

If the bond is insufficient the estate representative shall immediately submit an ex parte petition for an order increasing the bond to the amount required by statute; that is, an amount equal to the value of all personal property and one year's income from all sources. (Adopted effective October 1, 1998; Amended eff. July 1, 2004)

4.44 PROPERTY TAX CERTIFICATION TO BE FILED WITH "INVENTORY APPRAISAL"

A certification pursuant to Probate Code Section 8800(d) shall be filed concurrently with the filing of the "Inventory and Appraisal". (Adopted effective October 1, 1998)

4.45 REQUIRED FORM OF ACCOUNTS

- a) Format of Accounts. All accounts filed in probate proceedings, including guardianship, conservatorship and trust accounts, shall contain a summary or recapitulation showing:

- Period encompassed by the accounting.
- Amount of Appraisal, if first account. If subsequent account, amount chargeable from prior account.
- Amount of receipts, excluding capital items.
- Gains on sales or other disposition of assets (if any).
- Amount of disbursements, excluding capital items.
- Losses on sales or other disposition of assets (if any).
- Amount of property on hand.

A suggested form of summary is as follows:

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SUMMARY OF ACCOUNT

The petitioner is chargeable, and is entitled to the credits, respectively, as set forth in this summary of account. The attached supporting schedules are incorporated by this reference.

CHARGES

Amount of Inventory and Appraisal (or, if not the first account: Amount chargeable from Prior Account)	\$ _____
Receipts during Account Period (Schedule "A")	\$ _____
Gains on Sales (Schedule "B")	\$ _____
	=====
Total Charges \$.....	\$ _____

CREDITS

Disbursements during account Period (Schedule "C")	\$ _____
Losses on Sales (Schedule "D")	\$ _____
Other credits: Property distributed; homestead of other property set apart (Schedule "E")	\$ _____
Property on Hand (Schedule "F")	\$ _____
	=====
Total Credits	\$ _____

- b) Support of Summary. The summary should be supported by detailed schedules. The schedules of receipts and disbursements should show the nature or purpose of each item and date thereof. The schedule of property on hand should describe each item and indicate the appraised value.
- c) Distribution to Trustee. When part of the estate is to be distributed to a trustee, and accumulated income is to be paid over by the trustee to the trust beneficiaries, the form of account should permit the Court to determine if the personal representative has properly allocated receipts and disbursements between principal and income.
- d) Income and Expenses Attributable To Real Property. In estates where real property is specifically devised, the accounting or a schedule submitted therewith should set forth both the income received from said real property and any expenses allocated thereto (such as taxes, insurance, maintenance). (See Estate of McSweeney (1954) 123 Cal.App.2d 787)
- e) Waiver of Accounting. A detailed accounting may be waived by petition when all interested persons consent, are adult and competent. All waivers must be filed with the Court or endorsed on the petition. The effect of the waiver is to make it unnecessary to provide financial details, with the exception of a detailed listing of the property to be distributed and its' value for distribution purposes. All other matters normally reported upon at the time an accounting is filed must be presented in the petition.

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- f) Account Waiver by Administrator/Trustee. The Court will ordinarily not approve a waiver of accounting where the Estate's Administrator is Trustee of a Trust which is the sole or a primary beneficiary of the estate. (Adopted effective October 1, 1998; Amended effective January 1, 2001)

4.46 ALLEGATION RE: CLAIMS

Prior to filing the interim or final account, counsel are advised to review the Court file to insure that all creditors' claims which may have been filed have been addressed in the interim or final account. It is not sufficient in reports accompanying accounts or in reports where an accounting is waived, to allege merely that all claims have been paid. The claims filed must be listed, showing the claimant, the amount claimed, and the disposition of each claim. If any claim has been rejected, the date of service of notice of rejection of claim and whether suit on the claim has been filed must be stated.

Known creditors, contacted pursuant to Probate Code sections 9050 to 9054, inclusive, must be listed, whether or not such creditors filed a claim against the estate. Notices of Administration required by Probate Code section 9050 must be on file with the Court prior to, or at the time of, the hearing on the petition for final distribution.

The foregoing allegations must appear in the final report even though they may have appeared in whole or in part in prior reports. (Adopted effective October 1, 1998)

4.47 FEES MUST BE STATED EVEN THOUGH ACCOUNT WAIVED

In accounts, the accompanying report must state the amount of administrator's or executor's commissions and the amount of attorney's fees sought and must set forth the estate accounted for and the calculation of commissions and fees in substantially the following form:

FEE BASE

Inventory and Appraisal	\$ _____
Receipts/Income During Admin.	\$ _____
Gains on Sales	\$ _____
Losses on Sales	(\$ _____)
Fee Base	\$ _____

FEE COMPUTATION

4% on first \$15,000	(_____)	\$ _____
3% on next \$85,000	(_____)	\$ _____
2% on next \$900,000	(_____)	\$ _____
1% on next \$9,000,000	(_____)	\$ _____

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1/2% on next \$15,000,000	(_____)	\$_____
Above \$25,000,000(Rate: __%) (Amount: _____)		\$_____
		=====
	Total:	\$_____

[Note: Where a petition for distribution is accompanied by a waiver of accounting, the statutory fee computation should be calculated on the Estate's Inventory and Appraisal Value only.] (Adopted effective October 1, 1998; Amended effective January 1, 2001)

4.48 PROPERTY TO BE DISTRIBUTED MUST BE LISTED

The petition for distribution must list and describe in detail all property to be distributed, individual values and the total value. The description must include any cash on hand and must indicate whether or not promissory notes are secured or unsecured. If any note is secured, the security interest must be described in detail. The petition must include a complete legal description of any real property to be distributed.

The description must be set forth either in the body of the petition or in the prayer, or by a schedule in the accounting incorporated in the petition by reference. Description by reference to the inventory is not acceptable.

The petition for distribution must also list and describe in detail each beneficiary's specific share of all property to be distributed. (Adopted effective October 1, 1998; Amended effective July 1, 2001)

4.49 ACCOUNT - DEBTS PAID WITHOUT VERIFIED CLAIMS - VOUCHERS

Even if a claim has not been filed, the Court may, under Probate Code section 9154, approve the payment of a debt if the accounting shows that such debt was allowed during the time within which such claim could have been filed and the estate is solvent. Such approval, however, is discretionary with the Court and must be justified by allegations in a verified petition. (Adopted effective October 1, 1998)

4.50 ALLEGATION RE CHARACTER OF PROPERTY

In all cases a petition for distribution must contain an allegation as to the character of the property, whether separate or community.

If some portion of the assets consists of community property, the allegation must show whether the interest included is only the decedent's one-half interest in the community property or 100 percent (100%) of the community property of both spouses. In the absence of an election under Probate Code section 13502 by the surviving spouse to include in the estate his/her one-half interest in the community property, the Court has no jurisdiction to order distribution of such interest. (Adopted effective October 1, 1998)

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4.51 DESCRIPTION OF DISTRIBUTEES

The names and present addresses of all persons who are affected by the petition, and whether they are adults or minors, must appear in the petition for final distribution. (Adopted effective October 1, 1998)

4.52 COMPLIANCE WITH PROBATE CODE SECTION 9202

Before the Court will authorize distribution there must be a showing of compliance with Probate Code section 9202 or a showing that the notice thereunder is not required because neither decedent nor decedent's spouse received Medi-Cal, or that no claim can be made by the Department of Health Services because decedent died before June 28, 1981, was under age 65, or was survived by a spouse, minor child or disabled child. (Adopted effective October 1, 1998)

4.53 THE DECREE OF DISTRIBUTION

The decree of distribution shall be drawn so that the full extent of the decree may be determined without reference to the petition on which it is based or to other documents, such as the will. The decree shall contain:

- a) The distribution of property by named beneficiary, with a detailed list describing the property to be distributed to each beneficiary. Description by reference to the inventory is not acceptable. For distribution by reference to an attached exhibit, see Local Rule 4.04.
- b) For real property, the legal description and street address, if any, shall be stated.
- c) If an intestate decedent who survived his spouse leaves no issue, the applicability of Probate Code sections 6402 and 6402.5 must be alleged and the necessary tracing must be carried out as far as is possible.
- d) Decrees of Distribution Establishing Testamentary Trusts. Upon distribution the Court must determine whether a valid trust has been created by a will, determine the scope and terms of the trust, and order distribution of the trust property to the trustee. Since the decree of distribution supersedes the Will (*Estate of Callnon* (1979) 70 Cal. 2d 150); (*In re Lewis* (1969) 271 Cal.App. 2d 371), the terms of the trust shall be incorporated in the decree in such a manner as to give effect to the conditions existing at the time distribution is ordered. The pertinent provisions shall be set forth in the present tense and in the third person instead of quoting the will verbatim. (Adopted effective October 1, 1998)

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4.54 RECEIPTS ON DISTRIBUTION

A receipt for property received by a distributee shall be signed by him/her personally. The Court will not accept a receipt signed by an attorney-in-fact, except where there is a pre-existing durable power of attorney and a copy of the durable power of attorney is provided.

A receipt for property received by a distributee shall be specifically itemized, giving the distribution value of each asset and the total value of all property received. (Local Rules 4.45(e) and 4.49). (Adopted effective October 1, 1998)

TAXES -- SPECIAL REQUIREMENTS

4.55 INCOME TAX CERTIFICATE

- a) Franchise Tax Board Certificate. If the inventoried estate is appraised at more than \$400,000 and more than \$100,000 in the aggregate has been distributed or is distributable to beneficiaries or heirs who do not reside in California, final distribution will not be permitted unless there is first filed with the clerk a state income tax certificate issued by the Franchise Tax Board pursuant to Revenue and Taxation Code section 19513 certifying that all state personal income taxes imposed upon the decedent or the estate have been paid or payment is secured. Such certificate is issued upon the condition that the decree of distribution will be signed by the Court on or before a specified date.
- b) Expiration Date of Certificate. Decrees of final distribution will not be signed after the expiration of the date specified in the certificate. Although such certificate is not required and will not be issued by the Franchise Tax Board on a preliminary distribution, attorneys are cautioned that adequate funds must be withheld on preliminary distribution to pay or secure payment of such taxes on final distribution. Final distribution will not be allowed in the absence of such a certificate.
- c) Application to Distributions to Trustees. This section also applies to all non-resident trustees, irrespective of place of residence of the beneficiaries. (Adopted effective October 1, 1998)

ATTORNEY FEES AND PERSONAL REPRESENTATIVE COMMISSIONS IN DECEDENTS' ESTATES

4.56 FORMAT FOR REQUESTING FEES

An application for fees will not be considered unless the caption and prayer of the petition and the notice of hearing contain a reference to that application. (Adopted effective October 1, 1998)

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4.57 FEES TAKEN IN ADVANCE

There is no authority for the payment of fees in decedents estates in advance of a Court order authorizing the same. (Adopted effective October 1, 1998)

4.58 ALLOWANCE ON ACCOUNT OF STATUTORY FEES

Allowance on account of statutory fees will be granted by the Court only in proportion to the work actually completed, and ordinarily no more than fifty percent (50%) of the statutory fees will be allowed prior to the approval of the final account and the decree of final distribution. Until the final account is settled no part of the statutory fees will be allowed without a detailed description of services performed and remaining to be performed. An unsubstantiated claim that, e.g., fifty percent (50%) of the requested work has been performed is not sufficient. Until the final account is settled, the Court is unable to fix the total amount of statutory fees and any allowance made prior to that time must be low enough to avoid the possibility of overpayment.

The Court will allow a preliminary award of statutory fees only for good cause shown and ordinarily only in conjunction with a preliminary distribution of the estate. (Adopted effective October 1, 1998)

4.59 APPORTIONMENT OF FEES

Ordinarily, if apportionment of statutory fees between multiple attorneys is necessary, the Court will not allow partial payment but will defer all statutory fees until the final account is settled. (Adopted effective October 1, 1998)

4.60 BASIS FOR STATUTORY FEES MUST BE STATED EVEN THOUGH ACCOUNT WAIVED

In accounts or in petitions for distribution accompanied by a waiver of accounting, the report must state the amount of statutory fees payable and set forth the basis for the calculation. (Local Rule 4.47) (Adopted effective October 1, 1998; Amended effective January 1, 2001)

4.61 DECLARATION RE: SEPARATE ATTORNEY'S AND EXECUTOR'S FEES

- a) Fees may be awarded to a law firm of which a partner or shareholder is the personal representative only if an agreement not to participate in each other's compensation is first on file in the probate proceeding. Reference shall be made to its filing date in the final account.
- b) Whenever the attorneys representing an estate and the executor of the estate are members of the same law firm and each is requesting a separate fee but there is no specific provision in the will indicating the decedent/testator was informed of the possibility of separate fees, in addition to the declaration not to participate in fees, a declaration must be filed stating: 1) whether the decedent/testator was informed that there would be

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a separate fee for each in such situations; 2) whether the decedent/testator consented to that arrangement; and 3) what relationship existed between the attorney and the decedent/testator which would justify the receipt of separate fees as executor and as attorney in such a situation. The declaration must be served on all interested parties.

- c) When counsel for the personal representative, or another member of counsel's law firm, is retained by the estate to represent it with respect to a civil matter, the personal representative shall first seek Court approval of the fee arrangement or demonstrate to the Court in the form of a declaration that the fee arrangement was reviewed by independent counsel for the estate. (Adopted effective October 1, 1998)

4.62 FORMAT FOR REQUESTING EXTRAORDINARY FEES

- a) Compensation for Extraordinary Services. An application for compensation for extraordinary services will not be considered unless the caption and the prayer of the petition and the notice of hearing contain a reference to that application.
- b) Discretion of Court. The award of extraordinary fees and commissions is within the discretion of the Court. Ordinarily extraordinary fees will not be awarded without a proper showing that statutory fees have been exhausted. (See Estate of Walker (1963) 221 Cal.App.2d 792.)
- c) Standards. The standards by which extraordinary fees and commissions will be determined for personal representatives and attorneys are reasonableness and benefit to the interested parties. The Court will take into consideration, among other things, the following:
- Nature and difficulty of the services.
 - Results achieved.
 - Benefit to the estate, conservatee or ward.
 - Productivity of the time spent in performing the services.
 - Expertise and experience of the person requesting fees.
 - The amount of time devoted by each person performing services.
 - Total amount requested in relation to size and income of estate.
- (Adopted effective October 1, 1998)

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4.63 USE OF PARALEGALS

Pursuant to Probate Code sections 10811(b), 2642(a), 8547(d), and 10953(d), the use of paralegals to perform services of an extraordinary nature is permitted. The Court will require an itemized statement of services rendered by each paralegal, accompanied by allegations relating to the qualifications of the paralegal, both as to experience and training. (Adopted effective October 1, 1998)

4.64 PERSONAL REPRESENTATIVE COMMISSIONS

Local Rules 4.58, 4.59, 4.60, 4.61 and 4.63 are also applicable to requests for commissions for personal representatives in decedents' estates. (Adopted effective October 1, 1998)

TRUSTS

4.65 TRUSTEES' ACCOUNTS

Accounts filed by trustees under authority of Probate Code section 16062 should conform to the requirements set out in Local Rule 4.45 as well as Probate Code sections 1060 through 1064. If the trust is a testamentary trust, the starting balance of the first account must conform to the trustee's receipt filed on distribution of the assets of the decedent's estate.

Except for trusts that are subject to the continuing jurisdiction of the Superior Court (see Probate Code sections 17300-17354), the Court will order an accounting and report by a trustee only when an account is requested by someone beneficially interested in the trust. (Probate Code section 17200(b)(5).) (Adopted effective October 1, 1998; Amended effective July 1, 2001)

4.66 BENEFICIARIES TO BE LISTED IN PETITION

All petitions involving a testamentary trust or an inter vivos trust under Probate Code section 17200 must set forth the names and last known addresses of all beneficiaries, whether their interests are vested or contingent -- that is, all persons in being who shall or may participate in the income or corpus of the trust. (Adopted effective October 1, 1998)

TRUSTEE AND TRUSTEE'S ATTORNEY FEES

4.67 TRUSTEE FEES

Requests for trustee fees must be supported in the petition or in a separate verified declaration stating the nature, necessity, success, cost in time, detail of services performed, the value of the services believed to warrant additional fees, and the amount requested. Mere recitation of time spent, without more, is not adequate. In making this determination the criteria set forth in Estate of Nazro (1971), 15 Cal.App.3d 218 shall be applied. The Court has discretion to require further justification for all trustee fees. Although the Court will, as a general

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guideline, allow a fee of 3/4 of 1% of fair market value per annum, Court approval must nevertheless first be obtained in all instances where the amount of compensation is not expressly authorized in the trust instrument. Mere recitation of the 3/4 of 1% guideline is not sufficient. Trustees who base their requests for compensation on this guideline shall include a second column in the accounting which shall indicate the fair market value of each trust asset next to the carry value. (Adopted effective October 1, 1998)

4.68 ALLOWANCE OF ATTORNEY FEES FOR TRUSTEE REPRESENTATION

Attorney fees for trustee representation will be allowed according to the work actually performed. In general, requests for attorney fees must be supported in a petition or in a separate verified declaration stating the specific nature, benefit, time expended, detail of services performed and the amount requested. Mere recitation of time spent, without more, is not adequate. Time sheets may be appended as additional support. (Adopted effective October 1, 1998)

MISCELLANEOUS

4.69 USE OF POST OFFICE BOX NUMBERS

Any documents which require the address of the fiduciary in any probate, conservatorship or guardianship matter must provide a complete street address. The use of P.O. Box numbers or letters is not acceptable. (Adopted effective October 1, 1998).

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CHAPTER 5

CONSERVATORSHIPS AND GUARDIANSHIPS

5.00 PREAMBLE

The following rules should be adhered to with respect to the majority of matters presented to the court. In exceptional circumstances and for good cause shown, the court will consider individual exceptions to these rules where not prohibited from doing so by statutory or case law. (Adopted effective October 1, 1998)

5.01 FILINGS – COURT INVESTIGATOR

- a) With the exception of Judicial Council Forms, all separately filed Pleadings must include in the caption, the date, time, and place of hearing.
- b) A copy of all documents filed in a conservatorship proceeding must be served on the Court Investigator at the Monterey Branch of the Superior Court located at 1200 Aguajito Road, Monterey, CA 93940. Such service shall be reflected on the appropriate Proof of Service or Notice of Hearing filed with the Court. (Adopted effective October 1, 1998; Amended effective July 1, 2001; Amended effective January 1, 2004)

5.02 EX PARTE PETITIONS

- a) The Court in its discretion may require any ex parte petition to be noticed for hearing.
- b) Prior to presentation of an ex parte application, twenty-four (24) hours oral notice of the time, place and nature of the application, followed by written notice, shall be given to the Court Investigator. Similar oral notice must also be given to any person whom petitioner has reason to believe may object to the petition. A copy of the petition shall accompany the written notice to the Court Investigator.
- c) The following petitions, powers, orders or authority require a noticed hearing and will not be granted ex parte. If an urgency or emergency exists, the remedy is to request an order shortening time with service on the Court Investigator.
 - 1. Powers relating to medical consent under sections 2355, 2357 and 3200.
 - 2. Independent Powers under Probate Code sections 2590 and 2591 relating to real property or transfers of personal property.
 - 3. Petitions authorizing sales, transfers or encumbrances of personal property in an amount exceeding \$5,000 in the aggregate annually. (Probate Code section 2545(b))

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4. Proposed action to exercise Substituted Judgment. (Probate Code section 2580)
5. Authorization for gifts from excess income. (Probate Code section 2423.)
6. Authorization to purchase real property.
7. Petitions for approval of a compromised claim.
8. Petitions for fees.
(Adopted effective October 1, 1998)

APPOINTMENTS

5.03 PETITIONS FOR CONSERVATORSHIP

- a) If the proposed conservatee is a developmentally disabled person (Probate Code section 1420), a "Petition for Limited Conservatorship" is mandatory. For further guidance relating to the requirements and procedures of Probate Code section 1471(c), 1827.5, 1828.5, 1830, 1830(b) and 2351.5 see Local Rule 5.05. For those who do not have a developmental disability, a petition for a standard probate conservatorship is appropriate.
- b) Supplemental Information. All petitions must be accompanied by supplemental information pursuant to Probate Code section 1821(a). The supplemental information shall be on the Judicial Council form.
- c) Notice.
 1. Notice to Conservatee. The Probate Code requires that conservatees receive notice of the hearing of conservatorship petitions. The Court will, however, accept a waiver of notice by the conservatee if the conservatee is competent to make such a waiver.
 2. The petition requires a list of all relatives within the 2nd degree (parents, grandparents, children, grandchildren, and siblings). Notice of Hearing must be given to all such relatives and proposed conservatee's spouse in accordance with Probate Code section 1822. The list shall include the relationship of each person listed to the Conservatee.

If there are no relatives within the second degree and no spouse, the relatives described in Probate Code section 1821(b) must be listed and provided notice pursuant to Probate Code section 1822.

3. Notice may also be required to the Director of Mental Health, Director of Developmental Services, and/or the Veterans' Administration where appropriate in accordance with Probate Code section 1822.

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4. A minimum of thirty (30) days notice is required for the Court Investigator to complete an investigation pursuant to Probate Code section 1826. An investigation is required in all cases even if the proposed conservatee is the petitioner and will attend the hearing.
- d) Documents Required With Petition. The following documents are required to be filed with the petition for appointment of conservator regardless of whether proposed conservatee is the petitioner or will attend the hearing:
1. The supplemental information described in 5.03(b), above and Judicial Council Form GC 312 "Confidential Conservator Screening Form."
 2. Notice of Hearing (issued by Clerk's Office). A minimum of thirty (30) days notice to the Court Investigator is required.
 3. Citation, to be issued by Clerk's Office, except where proposed conservatee is the petitioner. Notice shall be given at least fifteen (15) days prior to hearing.
 4. "Notice to Court of Addresses" (Clerk's Form 212, rev. 1987) reflecting hearing date, present location of conservatee, residence address, if different, telephone number; also names of conservators, attorney of record, addresses, telephone number, and relationship of all the parties, and conservatee's social security number.
 5. If conservatee is medically unable to attend the hearing, a declaration from a licensed medical practitioner is required. Emotional or psychological instability is generally not sufficient cause. (Probate Code sections 1825(b) and (c).)
 6. If the proposed conservatee is found unable to attend the hearing after filing of the petition, petitioner shall promptly file a Declaration from a licensed medical practitioner (Clerk's Form 269) and provide a copy to the Court Investigator.
 7. Order Appointing Court Investigator directed to: "Monterey County Court Investigator". The appropriate boxes on the order should be designated to provide the Court Investigator ongoing authority for future reviews.
 8. Following service of the petition and prior to the hearing, the Proof of Service (Clerk's Form 211) or Order Dispensing with Notice (Clerk's Form 225) must be filed.
- e) The Petition for Permanent Conservatorship.
1. There shall be a separate proceeding for each person for whom conservatorship is sought, and each petition shall provide the proposed conservatee's Social Security number.

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2. Independent powers may not be requested except upon a noticed hearing, either as part of the initial petition or in a subsequently filed petition. (Probate Code sections 2592(c), 1460, et seq.) If Independent Powers under sections 2590 and 2591 are requested, an attachment to the petition shall specify the powers requested, and must state the reasons requiring the powers requested. Only those powers necessary and proper shall be granted.

Proposed restrictions or limitations on the Independent Powers must also be included. The Court will not grant Independent Powers to sell real property or to borrow money with real property as security, unless the bond includes the value of the real property and there are sufficient restrictions to guarantee conservatee's rights regarding the sale of a residence or former residence as contained in Probate Code section 2540(b).

3. That portion of the petition relating to inherent powers and duties of the conservator (sections 2351-2358) need not be completed unless petitioner wishes to limit or modify the conservator's powers. Unless restricted by the Court, the Conservator of the Person has the power to fix conservatee's residence inside the State of California (Probate Code section 2352), and the power to consent to or withhold consent for medical treatment, though not over conservatee's objection. (Probate Code section 2354)
4. If exclusive authority to consent to medical treatment is requested, that portion of the petition asking that conservatee be adjudged to lack capacity to consent to any form of medical treatment should be completed. Such powers are granted under Probate Code sections 1880, 1890, 2355 and 2357.

All petitions pursuant to Probate Code section 1880, including requests for those powers in the initial petition for conservatorship, must be accompanied by the declaration of a licensed physician, or a licensed psychologist within the scope of his or her licensure, indicating the conservatee or proposed conservatee lacks the capacity to give informed consent to any form of medical treatment and the reasons therefore in compliance with Probate Code section 1890(c). Declarations attesting only inability to attend the hearing for medical reasons do not comply with this requirement.

5. If Dementia Powers are sought, that portion of the petition asking that orders be issued relating dementia placement or treatment should be completed. Judicial Council Form GC-355 "Capacity Declaration-Conservatorship" must also be completed and filed.
6. For conservatorship of estates:
 - a. The character and estimated value of the property of the estate must be provided;

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- b. The petition must state whether property proposed to be included is community or separate.
7. When a petition is granted, the petitioner shall file the following documents prior to the issuance of Letters of Conservatorship:
- a. The Order Appointing Conservator (Judicial Counsel Form) and attachments;
 - b. Proof of Service of Order Appointing Conservator (Clerk's Form 270) including service on the Court Investigator and the Conservatee;
 - c. Bond or receipts from financial institutions per Probate Code section 2328;
 - d. Conservator's Acknowledgment of Duties & Responsibilities, including his or her date of birth and driver's license number.
 - e. Community Property. Notwithstanding any provisions of law which provide that the spouse of a proposed conservatee may exclude all or a portion of the community assets from the conservatorship estate, the Court will not ordinarily approve a conservatorship of the estate which does not include all of the community assets (not just conservatee's one-half). (Adopted effective October 1, 1998; Amended effective January 1, 2001; Amended effective July 1, 2001; Amended effective January 1, 2002)

5.04 PETITION FOR APPOINTMENT OF PROFESSIONAL CONSERVATOR

Where petitioner seeks to appoint a professional conservator, petitioner must allege that the proposed conservator is a professional conservator. (See box 3.c.(3) of Judicial Council Form GC-310.) The petitioner shall also allege whether the private professional conservator is registered in the Statewide Registry (Probate Code sections 2850 through 2856) and whether a current professional conservator's statement is on file with the Court and provide the registration number. (Probate Code sections 2340, 2341, 2342, 2343.) (Adopted effective October 1, 1998; Amended effective July 1, 2001)

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5.05 LIMITED CONSERVATORSHIPS

- a) If the proposed conservatee has a "developmental disability", as defined in Probate Code section 1420, the petition must be for a Limited Conservatorship.
- b) An assessment by the nearest regional center pursuant to Health and Safety Code section 416.8, as required by Probate Code section 1827.5, obviates the necessity of filing a "Confidential Supplemental Information", so long as such assessment provides the same information as that required by Probate Code section 1821(a).
- c) An ex parte order for appointment of Public Defender or private counsel should be submitted when the petition is filed to avoid continuance or delay. Appointment of counsel for a proposed limited conservatee is mandatory. (Probate Code section 1471(c).)
- d) The petition must specify what powers are requested for the conservator and which are proposed for retention by the conservatee. (Probate Code section 1830(b) and 2351.5.)
- e) The Court may exercise its discretion only at the hearing. (Probate Code section 1828.5(d)) Where the Court finds, at the hearing, that the proposed conservatee lacks the capacity to perform all tasks necessary to provide for his/her needs, it may impose a standard probate conservatorship, instead of a limited conservatorship. (Adopted effective October 1, 1998)

5.06 LANTERMAN-PETRIS-SHORT (LPS) CONSERVATORSHIPS

- a) Petition Requirements. All petitions for appointment of conservator should state whether or not there is presently a conservator appointed under the Lanterman-Petris-Short Act, and, if so, the number of the case, the name of the conservator and the LPS Court's findings regarding the affidavit of voter registration.
- b) Notice. Notice shall be given to the LPS Conservator in the same manner as that given to relatives in the second degree. (Adopted effective October 1, 1998)

5.07 TEMPORARY CONSERVATORSHIPS

- a) A petition for temporary conservatorship shall not be granted unless a petition for permanent conservatorship is on file and noticed for hearing.
- b) The Court will appoint a temporary conservator of the person and/or estate ex parte and without notice as required in Probate Code section 2250(c) only upon a factual showing that an urgent situation requires immediate attention.

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- c) Independent Powers pursuant to Probate Code sections 2590 and 2591 will not be granted under a temporary conservatorship without a noticed hearing as required by Probate Code sections 2592(c) and 1460.
- d) Extraordinary powers for authority to give or withhold consent for medical treatment pursuant to either Probate Code sections 2355 or 2357 shall not be granted except upon a noticed hearing. Conservatee must attend the hearing unless unwilling or unable. If the Conservatee will not attend, a personal interview and report by the Court Investigator pursuant to Probate Code sections 1892-1894 is required.
- e) A temporary conservator may not fix a temporary conservatee's residence at a place different from where he/she resided prior to the commencement of the proceedings without a noticed hearing (Probate Code section 2253), except in the case of an emergency and pursuant to Probate Code section 2254. The proposed conservatee must attend the hearing, or the Court Investigator shall personally interview the proposed conservatee and report to the Court. Procedures required by Probate Code section 2253 shall be strictly followed.
- f) A temporary conservator shall not sell or relinquish any lease or estate in real or personal property used as or within the conservatee's place of residence without a noticed hearing and specific approval of the Court. (Probate Code section 2252(e).)
- g) Attorney and conservator fees are not payable under a temporary conservatorship, unless Probate Code section 2640 is satisfied.
- h) An "Inventory and Appraisal" and an account must be filed within ninety (90) days after appointment of the temporary conservator, not the issuance of Letters. However, if the temporary conservator is appointed permanent conservator, the accounting for the period of temporary conservatorship may be included in the first annual account. (Probate Code sections 2255 and 2256.)
- i) Temporary Letters of Conservatorship must state a date certain of expiration. This date shall not go beyond the date of the hearing on the permanent conservatorship. If a continuance is requested and allowed, new Letters will be issued upon request and shall expire on the continued date of the hearing.
- j) Bond shall be required for a temporary conservatorship of the estate, except for estate assets deposited in an account requiring Court authorization to remove funds and where appropriate receipts are filed in the proceeding pursuant to Probate Code section 2328. Only under extraordinary circumstances will this requirement of a bond be waived. (Adopted effective October 1, 1998)

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5.08 HEARING AND APPOINTMENT

- a) The report of the Court Investigator shall be filed with the Clerk at least five (5) days in advance of the hearing. At the same time, a copy shall be mailed to the attorneys for petitioner and for the proposed conservatee, if any. The report of the Court Investigator and its contents shall be kept confidential as required by Probate Code section 1826(n).
- b) The proposed conservatee must attend the hearing except where excused pursuant to Probate Code section 1825.
 - 1. The proposed conservatee must come forward to the counsel table where the Court may inquire of and advise the proposed conservatee as required by Probate Code section 1828 or, in the case of a Limited Conservatorship, Probate Code section 1828.5.
 - 2. If there has been a nomination and/or waiver of bond filed, executed by the proposed conservatee, the Court shall satisfy itself that he/she had the capacity to execute and understand the nature and significance of such documents.
 - 3. The proposed conservatee shall personally respond to any Court inquiry. A statement by counsel that the conservatee is present and does not object is not sufficient.
 - 4. The above requirements also apply where the proposed conservatee is the petitioner.
- c) Before Letters shall be issued to the Conservator of the Person or Estate in a newly established conservatorship; or in the case of an existing conservatorship, before any subsequent orders will be signed at the time of the next Court review; the Conservator must:
 - 1. Purchase a copy of the "Handbook for Conservators" and supplement "How to Find and Use Community Resources." Execute and file "Acknowledgment of Receipt of Handbook," signed by him/her and including his/her date of birth and driver's license number;
 - 2. View the video "With Heart - Understanding Conservatorships". Unless the conservator is a registered professional conservator, he/she must execute and file the requisite acknowledgment of viewing.
- d) Fees
 - 1. Legal fees for counsel appointed by the Court to represent the conservatee may be approved and included in the Order Appointing Conservator.

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2. Fees for counsel representing the Petitioner or the Conservator, regardless of whether the conservatee was also the petitioner, may not be requested until after the filing of the "Inventory and Appraisal", and in no case before the expiration of ninety (90) days from the issuance of permanent Letters. (Probate Code section 2640) (Adopted effective October 1, 1998)

5.09 APPOINTMENT OF ATTORNEYS FOR CONSERVATEES

- a) Estate in Danger of Dissipation. Where it appears to the Court that the estate is in danger of being dissipated or that the conservator or guardian will not respond to citations issued by the Court, an attorney will be appointed for the conservatee. Said attorney shall prepare and file a report for the Court, no later than three (3) days prior to the scheduled hearing date.
- b) Medical Consent by Conservatee. The Court may appoint an attorney for the conservatee when a request is made under Probate Code section 1880 for the Court to determine whether the conservatee is incapable of giving medical consent, whether such request is made in the original petition or in a separate petition.
- c) Cessation of Representation by Attorney. The representation by an attorney appointed by the Court ceases upon the hearing on the petition or petitions for which he/she was appointed, unless continued representation is specifically ordered by the Court. (Adopted effective October 1, 1998)

5.10 BOND

At the time of appointment of a Conservator of the Estate, the Court must fix a bond. If the conservatee is the petitioner and has waived the requirement of a bond, the Court has the power to appoint the conservator without bond. It is the general policy, however, that a bond will be required if an individual is appointed. The Court will generally not waive the bond or set it in an amount less than is customary unless the conservatee is present at the hearing and is found competent to waive bond.

- a) Unless for good cause the Court orders otherwise, the amount of the bond shall include the total value of the personal property plus the total annual income.
 1. Annual income includes that derived from real and personal property.
 2. If the conservatee is a beneficiary under a trust which requires all or a fixed portion of the income of the trust to be distributed to the conservatee, the bond must include that income. However, if the trust provides that the trustee merely applies trust income for the conservatee's needs of care and maintenance, etc., and provides for excess income to be held in the trust and accrued to principal, a bond need not include the trust income.

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- b) If Independent Powers (Probate Code sections 2590 and 2591) are granted to include the sale of real property (Probate Code section 2591(d)), or to encumber real property as security for a loan, (Probate Code section 2591(f)), the bond shall include the value of the real property.
1. If sufficient restrictions, limitations or conditions to adequately safeguard and secure the real property are included in the order granting the Independent Powers, bond need not include the value of the real property.
 2. Where the Independent Power to sell real property is limited by requiring Court approval or confirmation, said confirmation shall follow the procedure required as if no Independent Power had been granted. Confirmation proceedings may be dispensed with upon the filing of an appropriate bond and compliance with Probate Code section 2540(b). Dispensing with the confirmation of sale does not imply Court approval. The Court retains the authority to review the sale at the time of the next account and Court review.
 3. If real property is sold pursuant to section 2591(d), the sale price may not be less than 90% of the appraised value determined by the Probate Referee within one (1) year prior to sale, unless otherwise authorized by the Court.
- c) With specific prior Court approval, bond may be reduced by the amount of estate assets deposited in an institution described in Probate Code section 2328, if appropriate receipts are filed with the Court verifying that such assets shall not be released without Court authorization.

Letters of conservatorship shall not issue until the receipts are filed with the Court. Otherwise, a bond will be required for the full amount, to be reduced upon the subsequent filing of appropriate receipts.

- d) A family relationship between the conservator and conservatee, in itself, is not sufficient cause to reduce or eliminate the bond requirement.
- e) If upon the filing of the "Inventory and Appraisal", or at any time when counsel for the conservator concludes that the bond is not sufficient, the conservator shall cause a sufficient bond to be filed or shall petition the Court to approve the existing bond upon the filing of appropriate receipts pursuant to Probate Code sections 2328 or 2456. (Adopted effective October 1, 1998; Amended effective July 1, 2001)

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POST-APPOINTMENT CONCERNS

5.11 NOTICE OF ESTABLISHMENT OF CONSERVATORSHIP

In each case in which real property is an asset of the estate, it is the duty of the conservator of the estate (whether temporary, permanent or successor) to record a notice of establishment of conservatorship with the county recorder in each county where real property of the estate is located, unless (a) the conservatorship is a limited conservatorship and the conservator has not been given the power to contract or (b) the rights of the conservatee have been broadened pursuant to Probate Code section 1873 so that the conservatee retains all powers to deal with the real property. (Adopted effective October 1, 1998)

5.12 CONSERVATOR'S GENERAL PLAN

- a) General Plan. Effective June 30, 1993, the statutory requirement that all conservators file a general plan with the Court was repealed. However, this Court will continue to require the filing of a general plan within ninety (90) days of appointment. A copy of the General Plan should be served upon the Court Investigator and notice of its filing shall be given to those persons who have been given notice of the petition.
- b) Verification of General Plan. The conservator shall verify the plan and retain a copy. Failure to file the plan shall be grounds for immediate suspension of powers and removal of the Conservator(s).
- c) Form and Content of General Plan. The plan shall set forth the following facts where applicable (person vs. estate vs. person and estate), in the following order:
 - Conservatee;
 - Conservatee's Address and Telephone Number;
 - Type of Residence; (e.g., own home, apartment, nursing facility, board & care home, etc.)
 - Description of current level of care;
 - Physical/Medical condition of Conservatee;
 - Anticipated change in residence and/or level of care, if any, and reason;
 - Anticipated frequency of visits to Conservatee;
 - Anticipated involvement of family and friends of Conservatee;
 - Estimated annual Conservator fee;
 - Estimated annual attorney fee;
 - Estimated annual cost of personal care plan and source of funds;
 - Estimated annual additional costs of estate administration (specify);
 - Value of estate assets and manner of vesting;
 - Real property:
 - Cash accounts:
 - Securities:
 - Tangible personal property:
 - Business interests:

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Notes receivable, specifically whether due from relatives, the amounts due, and whether payment is current according to the terms of the note:

Other:

Total:

- Annual income;
- Anticipated sales of estate assets, and reason;
- Anticipated estate activities other than collection of income, payment of obligations, and maintenance of records;
- Unusual circumstances related to conservatee and/or conservatorship estate.

I declare under penalty of perjury under the laws of California that the foregoing is true and correct, and that I have retained a copy of this General Plan for my records.

Date: _____
Conservator

(Adopted effective October 1, 1998)

5.13 CONSERVATEE'S RESIDENCE-CONSERVATEE'S REAL PROPERTY

- a) If the Court determines it appropriate and necessary, based upon information contained in the Court Investigator's report or obtained from any other source, the Court may order that a conservatee's residence not be changed without prior Court authorization.
- b) A sale of conservatee's residence or former residence must comply with Probate Code section 2540(b) and 2543(b). The Independent Power to sell a residence or former residence will not be granted. Compliance with Probate Code section 2540(b) is required in all instances. See also Local Rule 4.35.
- c) In no case is the conservator of the person authorized to fix conservatee's residence out of state without prior Court approval.
 - 1. When authorization is granted it shall be for a period of time not to exceed four (4) months. The Order shall provide for immediate return of the conservatee to the State of California at the end of the authorized time period. The Court will extend the four (4) month time period only upon a satisfactory showing that an equivalent proceeding has been initiated in the other state. The period of any extension granted by the Court will only be sufficient to allow the equivalent proceeding to be finalized. The Court retains jurisdiction until the equivalent proceeding is finalized and a Certified Copy of the Court's Order from the new state of residence is filed.
 - 2. Where authorization has been granted for temporary residence outside the State of California, the conservator shall return the conservatee to this state for the personal visit by the Court Investigator at the time a "Court Review" is required.

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3. The Court Investigator is not authorized to conduct any Court investigation or review through a third person out of state.
- d) A Court Review is not required where there is a conservatorship of the estate only, and the conservatee resides out of state and is not present in this state. (Probate Code section 1850(b) (2)) Timely accountings are still required. (See Local Rule 5.17, et seq.)
- e) A "Notice to Court of Addresses" (Clerk's Form 212, Rev. 1987) shall be filed:
 1. With the initial petition;
 2. Each time either the conservatee or conservator has a change of address; and,
 3. With each accounting, or petition to dispense with an accounting pursuant to Probate Code section 2628, after receipt of the "Notice of Court Review."
- f) Sales of conservatee's real property must also comply with 2540, 2543, and Local Rule 4.35. (Adopted eff. October 1, 1998; Amended eff. January 1, 2002; Amended eff. July 1, 2004)

5.14 INVENTORY AND APPRAISAL

- a) An "Inventory and Appraisal" shall be filed in all cases where there is a conservatorship of the estate, even where there is no estate. When the value of the individual items to be listed is small, such items may be listed in broad categories, such as Clothing, Tools, Furniture, etc. However, items unique in nature or of substantial value must be itemized and appraised separately. In addition, all securities must be itemized and appraised separately. It is not acceptable merely to indicate the value of a brokerage or similar account.
- b) After-acquired or newly discovered property shall be inventoried and appraised pursuant to Probate Code section 2613, in a Supplemental "Inventory and Appraisal." (Adopted effective October 1, 1998)

5.15 SUBSTITUTED JUDGMENT (Probate Code section 2580)

- a) Prior Court approval is required for any action specified in Probate Code sections 2580 or 2423, such as making gifts or establishing, amending or funding a trust.
- b) A noticed hearing is ordinarily required, as specified in Probate Code sections 2581 and 1460, et seq.

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- c) Petitions requesting authority to exercise substituted judgment will not be heard until after the permanent conservator is appointed and Letters have been issued. Additionally:
1. The "Inventory and Appraisal" shall be filed, unless the Court otherwise orders on the basis of a clear and convincing showing that an urgency exists; and
 2. If the Court waives filing of a formal "Inventory and Appraisal", the petition shall nonetheless include a description of the character and estimated value of the property of the estate.
- d) Petitions requesting Substituted Judgment, which potentially have an affect on the conservatee's estate plan, should provide all known testamentary documents related to the petition, including, but not limited to:
- Existing trust agreement;
 - Proposed trust agreement or proposed amendment;
 - Last will and testament of conservatee;
 - If no will, a specific description of how and to whom property would pass by intestacy; and
 - A statement of the nature and amount of existing claims of creditors' against the conservatorship estate.
- Confidential documents may be sealed and may be viewed by the judge in chambers to maintain confidentiality.
- e) Upon the creation of a trust pursuant to a petition to exercise substituted judgment, the conservatorship of the estate shall continue in effect. The conservator will continue to supervise the trustee and enforce the trustee's fiduciary duties where necessary. Accountings will continue to be required as they would have if the trust had not been established. Nothing in this rule affects a trust already in existence before the conservatorship was established.
- f) Regardless of any other provision of the trust to the contrary, during the settler's lifetime the trustee shall be subject to the same duties and limitations as a conservator of the estate under the laws of the State of California, as to the following matters:
1. Posting bond
 2. Filing accountings and reports for Court approval
 3. Investments and transaction
 4. Trustee and attorney fees
 5. Providing for the conservatee.

No sales, or leases for terms exceeding one year, shall be made without prior Court approval. (Adopted effective October 1, 1998)

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5.16 NOTICE OF CHANGE OF ADDRESS

Conservators and guardians shall file with the Court and serve upon the Court Investigator written notice of any change of their address, or the address of their conservatees, within thirty (30) days of the change of address. Failure to comply may result in suspension or removal. (Adopted effective October 1, 1998)

ACCOUNTS AND ACCOUNTING

5.17 COURT REVIEWS, ACCOUNTS AND STATUS REPORTS

- a) A court review, as described in Probate Code section 1850 and 1851, is required one (1) year after appointment, not date of issuance of Letters, and biennially thereafter.
 - 1. Conservator's "Account" and "Status Report" shall be filed in conjunction with each "Court Review".
- b) All Conservators who have not obtained a copy of the "Handbook for Conservators" or who have not viewed the video "With Heart - Understanding Conservatorship", must do so prior to the time of the Court Review. The accounting will not be approved by the Court until this requirement has been complied with.
- c) The "Status Report", required by Probate Code section 2620.1, shall be a separate document from the petition and account and shall be confidential. This document is required of a conservator and is also required with any petition to waive the account.
- d) Each "Account," whether filed annually or biennially shall cover the period ending on the anniversary date of appointment of the permanent conservator or successor.
 - 1. The Petition and "Account" shall be filed no later than sixty (60) days after the anniversary date and shall be noticed for hearing forty-five (45) days after its filing in a year when a Court Review is due and at least fifteen (15) days after filing in a year when no Court Review is due.
 - 2. The Court Investigator is required to personally visit the conservatee, review the "Account" and "Status Report", and file a written report fifteen (15) days prior to the hearing. (Probate Code section 1851.)
- e) In years when a Court Review is required, a "Notice of Court Review" will be filed by the Court Investigator and copies shall be served by mail on conservator(s), attorney for conservator(s) and attorney for conservatee.
 - 1. The "Notice of Court Review" shall be filed and mailed thirty (30) days prior to the anniversary date of appointment of conservator, or successor conservator;

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2. The "Notice of Court Review" will require the upcoming "Account" and "Status Report" to cover the period through, and end on, the anniversary date of appointment;
 3. The "Notice of Court Review" shall state the date by which the "Account" and "Status Report" must be filed, which shall be no later than sixty (60) days following the anniversary date;
 4. The "Notice of Court Review" shall state the date of hearing on the petition for approval of "Account" and "Court Review"; and
 5. If the "Account" and "Status Report" are not filed and no appearance is made at the hearing noticed for "Court Review", the Court shall issue an Order to Show Cause citing the Conservator(s) and Conservator(s)' attorney.
- f) Findings of the Court Investigator pursuant to Probate Code section 1851, shall be submitted to the Court in writing not less than 15 days prior to the hearing on the "Court Review" and "Account". A copy of the report shall also be mailed by the Court Investigator to the conservator(s) and to the attorney of record for the conservator and conservatee. This report and its contents shall be kept confidential. (Adopted effective October 1, 1998)

**5.18 ACCOUNTING FORMAT/SUPPORTING SCHEDULES/
PETITION FOR APPROVAL**

The accounting format must comply with the requirements of Probate Code §§1061, 1062, and 1063. (Adopted effective October 1, 1998; Amended effective January 1, 2001)

5.19 ACCOUNT - SUPPORTING DOCUMENTS REQUIRED

The following must be filed with each accounting:

1. The "Account" of a conservator of the estate who is also the conservator of the person must be accompanied by a "Confidential Status Report" (Probate Code section 2620.1). If the conservator of the estate is not the conservator of the person, the conservator of the person must file the status report in conjunction with the accounting filed by the conservator of the estate. Failure to comply with this rule may result in suspension or removal.
2. "Notice of Hearing"
3. "Notice to Court of Addresses" (Clerk's Form 212, rev. 1987) reflecting names, addresses and telephone numbers of conservatee, conservator, attorney for conservator and attorney for conservatee.

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4. "Order Appointing Court Investigator" executed to "Monterey County Court Investigator", unless ongoing authority has been provided for in the initial "Order Appointing Court Investigator". (Local Rule 16.02(d)(7).) (Adopted effective October 1, 1998)

5.20 FINAL ACCOUNTS

- a) The "Final Account" shall be filed no later than ninety (90) days after termination of the conservatorship. (Date of death or date of order terminating the conservatorship.)
- b) The "Final Account" shall be accompanied by a petition requesting its approval, authority for disposition of the assets, and conservator's discharge upon the filing of receipts.
- c) If there is a request for waiver of Probate Code section 1851.5 assessments, a clear and concise reason shall be included in the petition.
- d) If a probate proceeding has already been initiated, the petition shall state the caption, case number, county where filed, and the name of the petitioning party.
- e) Notice of the hearing on a petition for settlement of the "Final Account" must be given to the personal representative, if any, of a deceased conservatee.
- f) Bank statements and other such documents from mutual funds and brokerage accounts, etc. to support ending assets on hand, are now statutorily required. (Adopted effective October 1, 1998; Amended effective July 1, 2001)

5.21 FEES

- a) Fees for services as conservator or for legal services rendered the conservator or conservatorship may not be requested until after the "Inventory and Appraisal" is filed, and in no case before the expiration of ninety (90) days from the date of appointment of the conservator. (Probate Code section 2640)
- b) Fees for legal counsel appointed by the Court to represent the conservatee may be requested and included in the Order Appointing Conservator, notwithstanding that an "Inventory and Appraisal" has not yet been filed. If not awarded at this time, counsel for conservatee may request fees by his/her own noticed motion.
- c) Attorney Fees. In determining attorney fees for representation of conservators, the Court will consider those factors referred to in Local Rule 4.30. The requested fee must be supported in a verified petition or by a separate verified declaration stating the nature, benefit to the conservatee or conservatorship estate, time spent, hourly rate, detail of services rendered

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and the amount requested. A recitation of time spent, without more, is not adequate. The Court has the discretion to require additional justification for all attorney fees requested.

- d) Conservator Fees. The Court's review of conservator's fee request shall consider the nature of services provided, their necessity, the success or benefit to conservatee or the conservatorship estate, time spent, hourly rate, basis for the hourly rate, detail of services performed, expertise required, and the amount requested. A broad, general description of services or a simple recitation of time spent is not adequate. The Court has the discretion to require additional justification for all conservator fees requested.
- e) Fees must be requested, waived or deferral of payment requested in conjunction with the accounting. Deferral of payment will only be approved subsequent to Court approval of the amount of the fees for which deferral is requested.
- f) Where conservator is also the attorney for the conservatorship, there shall be separate itemized statements for services as conservator and for legal services showing clearly that there is no duplication of services and/or fees. (Adopted effective October 1, 1998)

5.22 SMALL ESTATES: PUBLIC BENEFITS (Probate Code section 2628)

- a) If a conservatorship estate qualifies under Probate Code section 2628, the Court may grant an ex parte petition to dispense with the filing of an account.
- b) The petition shall state:
 - 1. The value of the estate at the beginning and end of the account period, exclusive of conservatee's residence. It is not sufficient to allege that the total net value, exclusive of the residence, is less than \$5,000.
 - 2. The amount and nature of the "public benefit payments". It is not sufficient to allege that monthly payments, exclusive of public benefit payments, were less than \$750.
 - 3. A description of any other monthly income for each month of the accounting period, excluding wages and salaries of conservatee, demonstrating that the estate meets the requirements of Probate Code section 2628.
- c) The petition shall be presented each time an "Account" would otherwise be due. This assures the Court that the estate continues to qualify. A "Status Report" as required by Probate Code section 2620.1 is also required.
- d) Veteran's Benefits are not "public benefit payments".

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- e) The Order waiving an accounting must be served on the Court Investigator at least thirty (30) days prior to the hearing on the Court Review. (Adopted effective October 1, 1998)

5.23 TRUSTS AND CONSERVATORSHIPS

Where conservatee is a beneficiary of a trust not established pursuant to Probate Code section 2580:

- a) A copy of the trust agreement shall be provided to the Court Investigator upon request;
- b) At the time of each "Court Review" a verified summary or recapitulation showing the following shall be filed as a confidential document:
 - 1. The principal amount of the trust estate;
 - 2. A description of conservatee's beneficial interest in the trust;
 - 3. The amount of income generated for the benefit of the conservatee, regardless whether distributed or applied to principal; and
 - 4. The name, address, and telephone number of the trustee.
- c) Any income required by the trust instrument to be distributed to the conservatee is conservatorship income and it must be included in an accounting to the Court pursuant to these rules and Probate Code section 2620.
- d) For any trust created under the conservatorship as a matter of substituted judgment pursuant to Probate Code section 2580, accountings shall continue to be required, and the conservatorship shall not be terminated. (Local Rule 16.08) (Adopted effective October 1, 1998)

RESIGNATION AND REMOVAL

**5.24 RESIGNATION OR REMOVAL; APPOINTMENT OF SUCCESSOR;
FINAL ACCOUNT AND DISCHARGE**

- a) Effective Date of Resignation. The conservator may resign at any time but the resignation is not effective and will not be approved until the appointment of a successor conservator. (Termination of a conservatorship does not require resignation of the conservator.)
- b) Contemporaneous Petition to Appoint Successor. A petition for resignation must be filed contemporaneously with a petition for appointment of a successor conservator, provided that the consent of the successor conservator is filed prior to or at the time of hearing.

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- c) The petition for a successor conservator may be submitted on the same form approved by The Judicial Council of California for initial petitions, deleting those portions which are not applicable.
- d) The Notice of Hearing shall be substantially the same as required on an initial petition, including all relatives designated in Probate Code section 1821(b), other governmental agencies where appropriate, and the Court Investigator. Probate Code section 2683.)
- e) Attendance. Conservatee is not required to attend the hearing for appointment of successor conservator. If the conservatee will not attend the hearing, the Court Investigator must personally visit the conservatee and file a written report to the Court at least five (5) days prior to the hearing. (Probate Code section 2684.)
- f) Final Account. A final account of the resigning conservator and/or a petition for fees upon resignation cannot be approved until a successor is appointed and is served with notice of hearing and a copy of the account and/or petition.
- g) A successor conservator's "First Account", as in the case of a predecessor, shall be presented to the Court one (1) year after appointment in the same manner as required in Local Rules 5.18 and 5.19.
- h) At the hearing for appointment of successor conservator, the same procedural requirements apply as for the initial appointment of conservator. (See Local Rule 5.03 and take particular note of 5.03(e) 7).
- i) The successor conservator of the estate shall not account for the period prior to his/her appointment, except as provided in Probate Code section 2632, and the predecessor shall not be discharged until all of the following are accomplished:
 - 1. Approval of predecessor's Final Account including the period up to the appointment of the successor and delivery of assets;
 - 2. The filing of a receipt, executed by the successor conservator, acknowledging delivery and receipt of the assets as reflected in the "Assets on Hand" in the Final Account; and
 - 3. The predecessor conservator shall include in his/her petition for discharge a statement affirming that assets have been neither received by the estate nor disbursements made from the estate since the final account period. (Adopted effective October 1, 1998; Amended effective July 1, 2001; Amended effective January 1, 2002)

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5.25 ABSCONDING CONSERVATORS (Probate Code section 2632)

- a) For the purpose of this section an "Absconding Conservator" shall include:
 - 1. A conservator whose whereabouts are unknown, and who has not filed an "Account" that is due;
 - 2. A conservator whose whereabouts are known, but who refuses to cooperate in presenting an account to the Court; and
 - 3. A conservator who has removed the conservatee and/or his assets from the state without prior Court authorization.
- b) In the case of an absconding conservator, the Court may compel the attorney for the conservator or the attorney of record in the conservatorship proceeding to render an account to the extent that information or records are available to the attorney. The account need not be verified. (Probate Code section 2632)
- c) An absconding conservator may be removed and surcharged an amount deemed appropriate by the Court. An action against the surety may be initiated, on the basis of the amount surcharged, by appointed counsel for the conservatee. (Adopted effective October 1, 1998)

5.26 TERMINATION OF CONSERVATORSHIP

- a) A conservatorship is terminated by either:
 - 1. The death of the conservatee (petition to terminate not necessary). The conservator must file a Notice of Death of the conservatee and serve a copy on the Court Investigator within 10 days of learning of the conservatee's death; or
 - 2. By Court Order where the reason for establishing the conservatorship no longer exists. This must be established by an evidentiary showing. (Probate Code sections 1860-1863)
- b) The filing of a certification of competency issued by the superintendent of a state hospital pursuant to Welfare and Institutions Code section 7357, or other provisions of law, does not of itself terminate a conservatorship.
- c) The Court retains jurisdiction over the conservatorship to enforce orders, review the final account, and to grant discharge. (Probate Code section 2630) (Adopted effective October 1, 1998; Amended eff. July 1, 2004)

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5.27 ASSESSMENTS (Probate Code section 1851.5)

- a) Assessments for court investigations are due and payable at the time of filing an accounting or request for waiver of accounting and at the time of filing a petition to appoint successor conservator, unless deferred by order of the Court on the basis of hardship. Additionally, assessments previously deferred under prior law are now due and payable at the time of the next scheduled Court Review, unless deferred by order of the Court on the basis of hardship.
- b) Any request to have assessments deferred, must be included in the petition to appoint conservator, successor conservator, or in the petition to approve or waive the account and must include the factual basis for the request.
- c) Upon termination, any assessments previously deferred are nonetheless due and payable, except under either of the following conditions:
 - 1. The conservatee is still living and payment of all or a portion should be waived based upon hardship to the conservatee, or,
 - 2. The conservatee's estate has no assets with which to pay all or a portion of the assessments due. Hardship is not a consideration where the conservatee is deceased.
- d) The order approving "Final Account" of conservator will not be granted until the assessments are either paid or waived by the Court. (Adopted effective October 1, 1998; Amended eff. July 1, 2004)

MISCELLANEOUS

5.28 CONSERVATORSHIPS TRANSFERRED FROM ANOTHER COUNTY

Copies of the Petition and Order authorizing transfer shall be served upon the Court Investigator of the county to which it is transferred, including cases transferred to Monterey County. (Adopted effective October 1, 1998)

GUARDIANSHIPS

5.29 APPOINTMENT OF GENERAL GUARDIANS

- a) Petition. Petitions for appointment of guardians of minors are generally set for hearing. Bond and/or blocked accounts will be required for all estate guardianships.
- b) Supporting Declarations. The petition for appointment of guardian must be accompanied by:
 - 1) The Declaration Under Uniform Child Custody Jurisdiction Act (Clerk's Form 770), Judicial Council Form GC 212 "Confidential Guardian Screening Form" and;

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2) A Declaration setting forth the following:

- a. The reason for establishing the proposed guardianship;
 - b. The relationship of the proposed ward to the proposed guardian, including the duration and character of the relationship and what responsibilities for care, if any, the proposed guardian has had regarding the proposed ward. (Probate Code section 1513(a)(3))
 - c. The circumstances under which the proposed guardian acquired physical custody of the proposed ward, if the proposed guardian has physical custody of the proposed ward at the time the petition is filed. (Probate Code section 1513(a)(3))
 - d. Any developmental, emotional, psychological, or educational needs of the proposed ward that have been identified and the capability of the proposed guardian to meet these needs. (Probate Code section 1513(a)(2))
 - e. The anticipated duration of the proposed guardianship and the plans of both the natural parents and the proposed guardian for a stable and permanent home for the child. (Probate Code section 1513(a)(4))
 - f. The criminal history, if any, of the proposed guardian or a statement that the proposed guardian has no criminal history.
 - g. For each proposed guardian:
 - Date of birth;
 - Social security number;
 - Maiden name, if applicable;
 - Any aliases;
 - Home and work telephone numbers.
 - h. The name, age, relationship and social security number of any person, living in the household who is sixteen (16) years of age or older must also be provided.
- c) Notice. Fifteen (15) days notice by personal service must be given to non-petitioning parents, to the minor, if 12 years of age or older, and to the person or persons having custody. Fifteen (15) days notice by mail must be given to all second degree relatives.

See also Probate Code section 1461 and 1516 for other persons or entities that may require notice by mail.

In some cases notice may be dispensed with, as where waivers of notice and consents have been obtained from both of the minor's parents or from the

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minor, if 12 years of age or older. Notice may also be dispensed with upon a proper showing, where the Court determines it to be "in the interests of justice."

- d) Single Application for Multiple Wards. The Court will consider a single application for appointment of the same guardian of the person or estate or both of more than one minor, if the minors are siblings. In all other instances separate applications must be filed. (Adopted effective October 1, 1998; Amended effective July 1, 2001)

5.30 DEFINITION OF CONSANGUINITY

Probate Code section 1510(c)(3) requires relatives of the proposed ward within the second degree to be listed in the petition. Those relatives include: children, parents, grandchildren, grandparents, brothers and sisters. (NOTE: nephews, nieces, uncles, aunts, and great-grandparents are relatives of the third degree and are not entitled to notice under this section.) (Adopted effective October 1, 1998)

5.31 APPOINTMENT OF TEMPORARY GUARDIANS

- a) Petition. On or after filing a petition for appointment of a general guardian, any person entitled to petition may be appointed temporary guardian of the person or estate or both, in the discretion of the Court.
- b) Notice. If the minor is 12 years of age or older, petitions for temporary letters will require five (5) days notice to the proposed ward. The Court may grant temporary letters, ex parte, where immediate need for letters can be shown, and the Court deems it to be in the best interests of the minor to waive notice requirements.
- c) Bond. The Court will require temporary guardians of estates to post bond. (Adopted effective October 1, 1998)

**5.32 DUTIES OF GUARDIAN--LIABILITY OF PARENTS TO SUPPORT CHILD;
EDUCATIONAL PURPOSES (Probate Code sections 2420, 2422)**

Parents are required by statute to support their children. Where a parent is also the guardian, the Court will not permit guardianship funds to be used for the minor's maintenance, support or education except upon a showing of extraordinary circumstances which clearly justify a departure from this rule as being in the best interest of the minor. (Adopted effective October, 1, 1998)

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5.33 APPRAISALS AND ACCOUNTS

The Probate Code provides that an "Inventory and Appraisal" shall be filed within ninety (90) days after appointment. (Probate Code section 2610(a))

- a) Valuation. The original appraisal in guardianship estates shall set forth the assets and values as of the date of appointment. Appraisals of after acquired property, by inheritance or gift, shall fix the value as of the date of acquisition. Assets purchased by the guardian are carried in the account at the cost of acquisition.
- b) Periodic Payments. If the ward receives Veterans, Social Security, Welfare, or other periodic benefits, the initial inventory must indicate the amount received each month.
- c) Accounting. A verified "Account" is required one (1) year after the date of appointment, not the date of issuance of Letters. Biennial "Accounts" will be required thereafter. "Accounts" must be filed no later than sixty (60) days following the end of the accounting period.
- d) Form of Account. See Local Rules 5.18 and 4.45.
- e) Multiple Wards. When a guardian accounts for the assets of more than one minor, the accounting for each minor must be set forth individually. (Adopted effective October 1, 1998; Amended effective January 1, 2001)

5.34 INDEPENDENT POWERS

The Court does not encourage granting of independent powers and will grant particular powers only in response to specific allegations showing their necessity. Where the power to sell real property is granted, the sale must be returned to the Court for confirmation. (Adopted effective October 1, 1998)

MINOR'S OR INCOMPETENT'S CLAIM

**5.35 PROCEEDING TO COMPROMISE MINOR'S OR INCOMPETENT'S CLAIM
(Probate Code sections 3500 - 3612)**

- a) Petition. A petition to compromise the claim of a minor or incompetent must be filed as a civil proceeding, not a probate proceeding. The petition must set forth jurisdictional facts and state the amount to be paid, by whom, and what disbursement for costs and/or fees is requested. The petition must also request the deposit of the balance of the proceeds in a blocked account in a federally insured bank, credit union or savings and loan association in the manner provided by law, with receipts filed.
- b) Order. The order shall provide for the person or entity holding funds to make a check payable to the person or persons entitled to costs and fees and shall provide for the issuance of a check for the remaining funds made payable to

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the proposed trustee AND the bank, credit union or savings and loan association.

- c) Duty of Attorney. The attorney for the petitioner is responsible for assuring that the funds are deposited in accordance with the order and receipts filed.
- d) Attorney's Fees. Except for good cause shown, attorney's fees shall be limited to 25 percent of the recovery. The attorney is also entitled to recover costs advanced on behalf of the client(s). (Adopted effective October 1, 1998; Amended effective January 1, 2004)

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CHAPTER 6

CIVIL DEPARTMENT

6.01 ORGANIZATION AND DISTRIBUTION OF BUSINESS

- a) The Civil Division shall be comprised of the Civil Supervising Judge and a minimum of two other judges as assigned by the Presiding Judge. The Presiding Judge may assign additional judges as needed.
- b) The Supervising Judge shall have the responsibility of assigning cases, monitoring case and trial management, and supervising the functions of the Civil Division. (Adopted effective October 1, 1998)

6.02 JURISDICTION AND LOCATION

- a) Jurisdiction. The Civil Division shall have jurisdiction over all civil cases, regardless of jurisdictional amount, to include: civil jury and court trials, unlawful detainer, small claims appeals, creditors examinations, minor's compromises, probate matters, civil settlement conferences, civil writs, civil case and trial management, and law and motion.
- b) Location. The Civil Division shall be located in the Monterey Branch Courthouse at 1200 Aguajito Road, Monterey, California. All civil cases shall be processed and tried by the Civil Division except as otherwise authorized by these rules, specially assigned, or as directed by the Presiding Judge.
- c) Filing of Cases. Civil cases within the jurisdiction of the Civil Division may be delivered to the Salinas, King City, Marina, or Monterey Courthouse but will be filed at the Monterey Courthouse. Cases delivered to locations other than the Monterey Courthouse shall be date stamped as "received" and transported by Court courier to the Monterey Courthouse. Any such case shall be deemed "filed" at the date and time it is "received" stamped at any authorized courthouse. (Adopted effective October 1, 1998; Amended eff. July 1, 2004)

6.03 CALENDARS

- a) Civil Jury Trials: Calendar call on Monday at 8:30 a.m. to be assigned by the Civil Supervising Judge.
- b) Court Trials, Long Cause and Short Cause: Tuesday, Wednesday, and Thursday, at 8:30 a.m. as assigned by the Civil Supervising Judge.
- c) Creditor's Examinations, Minor's Compromises, and Default hearings, Tuesday, Wednesday, and Thursday, 8:30 a.m., as assigned by the Civil Supervising Judge.

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- d) Adoptions and Dissolutions Defaults are heard Monday through Wednesday at 8:30 a.m. in the Family Law Court.
- e) Civil Harassment matters and Civil Domestic Violence matters are heard Thursdays at 8:30 a.m. in the Family Law Court.
- f) Case Management.
 - 1. Order to Show Cause: Tuesday, Wednesday and Thursday, 8:30 a.m. or as otherwise ordered by the Court.
 - 2. Case Management Conferences: Friday, 10:00 a.m. or as specially set or assigned by the Court.
- g) Law & Motion.
 - 1. Time: Friday, 9:00 a.m.
 - 2. Department: Except when sufficient judges are not available, Law & motion shall be divided and heard in two departments. The Court shall assign the appropriate department.
- h) Probate: Friday, 10:30 a.m.
- i) Unlawful Detainer Trials: Tuesday, Wednesday, and Thursday at 8:30 a.m. as assigned by the Court.
- j) Settlement Conferences: Friday 1:30 p.m.; and as specially set.
- k) Small claims appeals: Tuesday, Wednesday and Thursday at 8:30 a.m. as assigned by the Court. (Adopted eff. October 1, 1998; Amended eff. July 1, 2001; Amended eff. January 1, 2003; Amended eff. July 1, 2003; Amended eff. July 1, 2004)

**6.04 DETERMINATION AND DESIGNATION OF JURISDICTIONAL AMOUNTS
IN CONTROVERSY**

- a) The party filing an action shall designate the "filing jurisdiction" in the court title.
- b) Superior Court unlimited matters shall be titled: The Superior Court of California, County of Monterey.
- c) Superior Court limited matters shall be titled: The Superior Court of California, County of Monterey.
- d) At the Case Management Conference or any other noticed motion, the Court may, on its own motion or the motion of any party, designate the jurisdiction in accordance with applicable law. (Adopted effective October 1, 1998;

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Amended effective July 1, 1999; Amended effective July 1, 2001; Amended effective January 1, 2003)

6.05 CASE AND TRIAL MANAGEMENT RULES - GENERAL

- a) This section shall apply to all civil cases except domestic relations, adoption, probate, and unlawful detainer.
- b) The setting of all civil cases for trial shall be in accordance with Rules for Trial Courts 208-214 of the California Rules of Court and these rules. (Adopted effective October 1, 1998; Amended effective January 1, 2003)

6.06 POLICY STATEMENT

Pursuant to statutes of the State of California, it is the responsibility of the Court to establish procedures for the timely and effective disposition of civil cases.

The Court is charged with the responsibility of ensuring all parties a fair and timely resolution of their disputes, and the Court is in the best position to establish neutral rules and policies without adversely affecting all parties' right to a fair trial. Effective management of the judicial system will build continuing respect by the community for government, minimize the costs to the parties and the public, and maximize the probability that cases will be timely resolved. It is the purpose of these rules to establish such a procedure without unreasonably affecting the adversary process. (Adopted effective October 1, 1998; Amended effective July 1, 1999)

6.07 POLICY GOALS

- a) The goals of the Monterey County Civil Case and Trial Management System are:
 - 1. to provide an effective and fair procedure for the timely disposition of civil cases;
 - 2. to provide a mechanism to gather needed case information in order to make appropriate judicial management decisions; and
 - 3. to establish reasonable rules and policies to require that cases reporting "ready" for trial may be tried without unnecessary delays or interruptions.
- b) It is the policy of this Court that all matters be resolved within 2 years of the filing of the complaint. Except for good cause shown, all matters will be set for trial within 3 to 5 months from the Case Management Statement. If for good cause shown it appears to the Court that the matter will not be ready for trial during this period, the Court will set further Case Management or Status Conferences as necessary.
- c) In order to effectuate these goals, it is the intent of the Court to differentiate between cases according to their anticipated complexity and length. In the

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discretion of the Court, cases will generally be assigned, under these policies and rules, into one of the following categories:

CATEGORY ONE: Category one cases are defined as cases with an estimated length of trial of two days or less and/or presenting no complex issues. These cases will be assigned a trial and mandatory settlement conference date and will be required to file a Trial Management Report and Brief, Friday prior to trial. It is expected that these cases will reach disposition in no more than 12 months.

CATEGORY TWO: Category two cases are defined as cases with an estimated length of trial of four days or less and/or presenting significant legal issues. These cases will be assigned a trial, a status conference as necessary, a mandatory settlement conference date, and will be required to file a Trial Management Report and Brief (4) four court days prior to trial. It is expected that these cases will be disposed of in no more than 12 to 18 months.

CATEGORY THREE: Category three cases are defined as cases with an estimated length of trial of over four court days and/or presenting complex legal or factual issues. These cases may be assigned a trial, status conferences as necessary, a mandatory settlement conference date, a trial management conference as necessary, and will be required to file a Trial Management Report and Brief (4) four court days prior to trial. In addition, these cases may be pre-assigned to a trial department for all purposes. It is anticipated that these cases will be disposed of in no more than 12 to 24 months.

- d) The Court recognizes that an early and amicable disposition will minimize costs to the litigants and public. The Court will encourage early voluntary settlement conferences and/or other alternative dispute resolution in all cases.
- e) Failure to follow these rules and/or file a required Case Management Statement or Trial Management Report may result in sanctions. (Adopted effective October 1, 1998; Amended effective January 1, 2003)

6.08 FROM CASE FILING TO CASE MANAGEMENT STATEMENT

- a) On the filing of every complaint, including cases transferred in from another court, the clerk shall issue a CIVIL CASE MANAGEMENT NOTICE [Appendix A] to the filing party. The clerk shall set a date for filing of the CASE MANAGEMENT STATEMENT (CM-110, Appendix B) and include that date in the Civil Case Management Notice. The date shall be set no later than 120 days from the filing of the complaint.
- b) A copy of the Civil Case Management Notice shall be served on opposing parties in addition to all other documents required to be served. A declaration of service of the Civil Case Management Notice shall be included in the proof of service.

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- c) It is the policy of the Court that all complaints and cross-complaints be filed and served per California Rules of Court, Rule 201.7.
- d) Unless otherwise ordered by the Court, responsive pleadings filed after demurrer, motion to strike, quash service, change venue, stay or dismiss the action shall be filed within 10 days following the notice of ruling. (Adopted effective October 1, 1998; Amended effective January 1, 2003; Amended eff. July 1, 2004)

6.09 CASE MANAGEMENT STATEMENT

- a) All parties shall file and serve the Case Management Statement (CM-110, Appendix B) no later than the date set by the clerk on the Case Management Notice.
- b) The attorneys and/or parties shall meet and confer prior to the filing of the Case Management Statement as to all matters required to be contained therein. They shall attempt to resolve potential disputes, establish a time schedule for completion of discovery consistent with the time standards contained in these rules, and determine which, if any, alternative dispute resolution procedure is appropriate and when it should be scheduled.
- c) If any party fails to file a Case Management Statement, the Court may do any of the following:
 - 1. Order the Case Management Statement filed and/or set the matter for a hearing to show cause why sanctions should not be imposed; or
 - 2. Find that the defaulting party has waived all objections, time conflicts, jury trial, and is ready for trial and proceed without further action.
- d) On receipt of the Case Management Statement the Court may take the following actions:
 - 1. Determine the potential complexity and/or length of the matter and assign it to a CASE CATEGORY;
 - 2. Order a Case Management Conference and set a time therefore. In determining whether to set a Case Management Conference the Court will consider the following factors:
 - a. Is the matter at issue? If not, why not?
 - b. Is the matter a complex case and/or one which may be protracted?
 - c. Are there disagreements between the parties concerning the status of the case, expected length of trial, discovery, complexity of the issues, or other relevant matters?

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- d. Is the matter one which may be amenable to early settlement or other alternative dispute resolution procedures?
- e. Is a Case Management Conference requested by any of the parties?
- 3. Refer the matter to arbitration, voluntary settlement conference, mediation, or other alternative dispute resolution procedure;
- 4. Order that the rules for Economic Litigation shall apply, CCP 90 and 91;
- 5. Assign the case to a particular judge for all purposes;
- 6. Make orders establishing discovery schedules including but not limited to a discovery cut-off, exchange of expert witness information, and a schedule for completion of expert depositions;
- 7. Set the matter for mandatory settlement conference as provided in these rules;
- 8. Assign a trial date;
- 9. Make appropriate Trial Management Orders in accordance with these rules; and/or
- 10. Make any other orders to achieve the interests of justice and the timely disposition of the case. (Adopted effective October 1, 1998; Amended effective January 1, 2003)

6.10 CASE MANAGEMENT CONFERENCES

- a) Case Management Conferences shall be set at a time and date determined by the Supervising Judge of the Civil Department.
- b) If Case Management Statements are ordered to be filed they shall be filed 15 days prior to the date of the hearing per California Rules of Court, Rule 212(g).
- c) Counsel and/or parties attending the conference shall be familiar with the case and fully prepared to discuss all matters contained in the Case Management Statements. Failure to attend or to participate effectively may result in appropriate sanctions.
- d) At or before the Case Management Conference, the Court may make any of the orders indicated above, and, determine the appropriate jurisdictional level. If it appears for good cause that the matter will not be ready for trial within 3 to 5 months of the Case Management Conference, the Court shall set additional Case Management or Status Conferences as necessary. (Adopted effective October 1, 1998; Amended effective January 1, 2003; Amended eff. July 1, 2004)

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6.11 TRIAL MANAGEMENT ORDERS, REPORTS, AND CONFERENCES

- a) If a case is reported ready for trial and has not settled, it is reasonable for the Court to expect that the parties are prepared, have timely reviewed and exchanged information, and that there will be no unnecessary delays in the trial. Trial Management policies, orders, reports, and/or conferences are means for the Court to monitor trial preparation and ensure that the parties are aware of and comply with the Court's expectations. The parties are expected to meet, confer, and cooperate in complying with these rules.
- b) On review of the Case Management Statements, at the Case Management Conference, or at any time thereafter as it appears appropriate to the Court, the Court shall determine or modify trial management procedures and assign cases and Trial Management requirements as follows:
 - 1. CATEGORY ONE cases will be required to comply with the Court's orders, meet and confer with other Counsel and/or parties, and prepare a Trial Management Report and Brief [Appendix C] to be filed Friday before trial.
 - 2. CATEGORY TWO cases will be required to comply with the Court's orders, meet and confer with other counsel and/or parties, and prepare a Trial Management Report and Brief [APPENDIX C], which shall be filed and personally served, no later than 3:00 p.m., four (4) court days prior to trial.
 - 3. CATEGORY THREE cases will be required to comply with the Court's orders, meet and confer with other counsel and/or parties, prepare a Trial Management Report and Brief [APPENDIX C], and attend a Trial Management Conference as necessary. Trial Management Conference Reports shall be prepared in the format indicated in APPENDIX C and shall be served and filed (4) four court days prior to trial. (Adopted effective October 1, 1998; Amended effective July 1, 1999; Amended effective January 1, 2003)

6.12 MANAGEMENT OF THE TRIAL

- a) DISCOVERY
 - 1. Attorneys and/or parties shall timely respond to all discovery requests. If a dispute arises the attorneys shall promptly meet and confer, in good faith, and attempt to resolve the dispute in no more than 10 days. The attorneys shall meet and confer prior to the Case Management Conference and continuing thereafter as needed to attempt to minimize the costs of discovery, reach appropriate stipulations, and set a discovery schedule.
 - 2. Discovery shall be planned so that cases shall be ready to be tried within the Judicial Council time standards. Unless good cause is shown, the setting of trials will not be delayed for failure to complete discovery.

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3. The week before trial shall be reserved for trial preparation. There shall be no discovery during this period, including expert witness dispositions, unless specifically authorized by the Court.

b) VOIR DIRE

The primary responsibility for voir dire will be with the Court.

The attorneys for the parties will be allowed additional oral voir dire in the discretion of the Court on a showing of good cause and consistent with California law. Supplemental questions will be allowed for good cause in the discretion of the Court. The Court may set reasonable time limits based on the nature and complexity of the case. The Trial Judge shall determine the method of jury selection depending on the specific case.

c) WITNESSES

The attorneys shall arrange for all witnesses to be immediately available as needed in order that there shall be no interruptions or delays. Any scheduling problems shall be brought to the attention of the Court immediately in the Trial Management Report or immediately on discovery thereof.

The attorneys shall instruct all witnesses not to discuss any aspect of the case in or around the courtroom or in the vicinity of any prospective juror and not to communicate in any fashion with any prospective juror or sworn juror.

d) CLOSING ARGUMENTS

Each party shall be allowed a reasonable time for closing arguments. The trial judge may set reasonable time expectations after discussion with counsel and at the close of evidence.

e) JURY INSTRUCTIONS

All proposed instructions shall be lodged with the Court with the Trial Management Report and Brief. CACI instructions which are requested without modification may be requested by number. CACI 200 must be completed and modified as it pertains to the particular case. Proposed instructions shall be submitted in duplicate. One copy shall be prepared on plain paper, separate from argument or authorities, and shall not indicate by whom the instructions are presented. At the close of evidence, the trial Court will conduct a hearing on instructions to determine the final instructions to be given to the jury.

f) VERDICT FORMS:

Proposed verdict forms shall be filed with the Report. A special verdict form shall be used unless otherwise approved by the Court. The verdict forms shall be prepared on plain pleading paper and shall not indicate by whom the verdict form

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was prepared. The trial Court will conduct a hearing to determine the final form of verdict. (Adopted effective October 1, 1998; Amended effective January 1, 2003; Amended effective July 1, 2004)

6.13 SETTLEMENT CONFERENCES

- a) A mandatory Settlement Conference will be set by the Court approximately seventeen (17) days prior to the trial date unless the Court determines that an earlier settlement conference shall be appropriate.
- b) Unless otherwise ordered by the Court, at any mandatory Settlement Conference, all parties and/or principals with full legal and monetary authority to settle the case shall be in personal attendance. Insurance representatives shall have full authority to settle the case and shall be fully knowledgeable about the case.
- c) Requests for telephone standby shall be approved only by the Judge. If telephone standby is approved, the requesting person shall be available at the agreed location until excused by the Court regardless of the time in that location. In any case where telephone standby has been approved, the Court may, in its sole discretion, continue the conference and order that person to personally attend.
- d) Per California Rules of Court, Rule 222(d) each party shall prepare, file and serve (5) five court days before the conference, a written statement containing the following information:
 - 1. A complete description of the nature of the case and the facts in support of that parties contentions, including both liability and damages, and indicating those matters that are agreed upon or in dispute;
 - 2. The legal contentions of that party with authorities in support thereof;
 - 3. A listing of all alleged economic damages incurred and the basis therefore; and a statement of those agreed to and/or in dispute;
 - 4. All prior settlement offers and demands;
 - 5. Any perceived impediments to settlement. Settlement Conference statements shall not be confidential unless ordered by the Court.
- e. The trial attorneys or a fully informed associate with full authority to settle the matter shall attend for each party. Counsel shall be prepared to make a bona fide offer of settlement.
- f. Failure to comply with this rule may result in an award of attorney fees or sanctions pursuant to California Rules of Court 227 and Code of Civil Procedure section 128.5.

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- g. These rules shall apply to all settlement conferences whether considered mandatory or voluntary. (Adopted effective October 1, 1998; Amended effective January 1, 2003)

6.14 TELEPHONE APPEARANCE

- a) In accordance with the provision of Rule 298 of the California Rules of Court, counsel and unrepresented litigants shall have the option of appearing by telephone in any conference or non-evidentiary law and motion hearing, excluding settlement conferences. Teleconferencing is provided through Conference Call Service, a private vendor. Arrangements to schedule teleconferencing for a conference or hearing shall be made directly with Conference Call Service by calling 1-800-723-1220. A fee will be charged for this service and shall be payable directly to Conference Call Service.

(Adopted effective October 1, 1998; Amended effective July 1, 1999; Amended effective January 1, 2003)

6.15 MISCELLANEOUS RULES

- a) Notice of Settlement. The Court shall be notified of the settlement of any case immediately. If the notice is oral it shall be followed by written notification received by the Court within (2) days. If a case is reported as settled all dismissals shall be filed with the Court within 45 calendar days. This time may be extended by written ex parte request, for good cause, on court order. If nothing is received by the Court during this period of time and no extensions have been granted, the court will presume the matter is completed and dismiss the case after 45 days pursuant to California Rule of Court 225.
- b) Orders. If a party is required to prepare any order it shall be prepared, forwarded to all other parties for written approval as to form, and returned to the Court within 14 days. Signature blocks indicating approval of all attorneys and/or parties shall be incorporated into the order. Any party not responding to the request for approval within 5 days shall be deemed to have waived any objection. Proof of mailing shall be provided with the order. If there is an objection to the order the attorneys and/or parties shall meet and confer within five days. If there are any remaining objections each party shall prepare a proposed order and brief letter explaining their objection. It is the responsibility of the attorney/party ordered to prepare the order to forward all objections to the Court in a single package.
- c) Delay in Prosecution. It is the intent of the Court to monitor the process of cases to ensure final resolution within the time guidelines set by the Judicial Council. Where appropriate, the Court shall, on it's own motion, calendar all cases that have not been brought to final judgment within two years from the date of filing of the complaint, for dismissal under applicable California law and Rules of Court. Failure to file timely objections shall be deemed a consent to dismissal.

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- d) Collection Cases. All collection cases shall be designated Category One, unless otherwise ordered by the Court. Except for good cause approved by the Court, they shall be finally concluded within one year of filing of the complaint unless stayed by operation of law or a Conditional Settlement has been reached. The parties shall diligently pursue personal service within nine (9) months. Case Management Statements shall be filed as required by these rules.
- e) Stayed Cases. The attorneys shall promptly notify the Court if a case is stayed by operation of law (bankruptcy, removal to Federal Court, coordination proceedings, conditional settlement agreement, etc.) If a stay is lifted the attorneys shall notify the Court within ten (10) days. Supplemental case management report shall be filed at no more than six month intervals informing the Court as to the status of the proceedings. If a report is not timely filed the Court shall presume that the matter has been finally resolved and dismiss the proceeding.
- f) Alternative Dispute Resolution. It is the policy of this Court to promote and encourage alternative dispute resolution. In any case where Judicial Arbitration is ordered the parties may stipulate to substitute private arbitration or mediation. In any case where the matter is referred to any form of alternative dispute resolution, including Judicial Arbitration, it shall be finally concluded in no more than 90 days if no other date is set by the Court.
- g) Interpreters. It is the responsibility of the attorney/party to obtain an interpreter if needed for any civil matter. A family member, friend, or the attorney may only interpret (1) in an uncontested matter, (2) with the express consent of the party, (3) with the express statement of the attorney that there is no conflict of interest, and, (4) on being properly sworn. (Adopted effective October 1, 1998; Amended effective January 1, 2003)

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APPENDIX A

CASE MANAGEMENT NOTICE

1. NOTICE is hereby given that a CASE MANAGEMENT STATEMENT shall be filed with the Court and served on all parties NO LATER THAN:

DATE: _____

2. No party may stipulate to extend the date set above.
3. On receipt of the CASE MANAGEMENT STATEMENT the Court may set a CASE MANAGEMENT CONFERENCE. If a Case Management Conference is set by the Court, it is expected that trial counsel for each party and each self-represented party shall attend and be fully prepared to participate effectively in the conference.
4. On receipt of the CASE MANAGEMENT STATEMENT or at the CASE MANAGEMENT CONFERENCE the Court may make the following orders:
 - a. refer the matter to arbitration or other alternative dispute resolution procedure;
 - b. identify the case as one which may be protracted and in need of special attention;
 - c. assign the case to a particular judge for all purposes;
 - d. assign a mandatory settlement conference and trial date;
 - e. make orders establishing discovery schedules and cut-offs, including expert witness disclosure and discovery;
 - f. make appropriate TRIAL MANAGEMENT ORDERS; and/or
 - g. make any other orders to achieve the interests of justice and the timely disposition of the case, including the setting of additional STATUS CONFERENCES.
1. It is the policy of this Court that all complaints and cross-complaints be filed and served, all challenges to the pleadings be heard; and the matter be at-issue no later than 180 days from the filing of the complaint. It is also the policy of this Court that all civil matters be resolved in no more than 12 to 24 months of the filing of the complaint.
2. Failure to file the CASE MANAGEMENT STATEMENT, attend a CASE MANAGEMENT CONFERENCE and participate effectively, or comply with any CASE AND TRIAL MANAGEMENT RULES may result in sanctions.

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3. It is the responsibility of the parties and/or their attorneys to be familiar with Monterey County Case and Trial Management Policies and Rules and to comply therewith.

BY ORDER OF THE PRESIDING JUDGE

(APPENDIX A, Adopted effective October 1, 1998; Amended effective January 1, 2003.)

SEE JUDICIAL COUNCIL FORM CM-110 (JULY 1, 2002)

APPENDIX B, Adopted effective October 1, 1998; Amended effective January 1, 2003.)

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APPENDIX C

**SUPERIOR COURT OF CALIFORNIA,
COUNTY OF MONTEREY
ORDER FOR TRIAL MANAGEMENT REPORT AND BRIEF**

In order to ensure that the case is ready for trial and that there will be no unnecessary delays, the following orders are made:

1. Trial counsel for each of the parties shall meet and confer prior to trial for purposes of reviewing exhibits, potential witnesses, stipulations, exchange of trial motions, and compliance with this order. Failure to meet and confer concerning the matters herein may result in sanctions, including but not limited to the exclusion or limitation of evidence, monetary sanctions, dismissal of the case, or entry of a default judgment.
2. The attorneys shall prepare a Trial Management Report and Brief and submit the Report as follows:

Category One: Friday prior to trial.

Category Two: Four (4) court days prior to trial, no later than 3:00 p.m.

Category Three: The Court may set a Trial Management Conference approximately 10 days prior to trial. The attorneys shall meet and confer, prior to the Trial Management Conference, for purposes of preparing the Trial Management Report and Brief. The Trial Management Report and Brief shall be filed jointly or individually at least three days prior to the Conference, otherwise (4) four court days prior to trial.

TRIAL MANAGEMENT REPORT AND BRIEF

1. FORMAT OF REPORT

The Trial Management Report and Brief shall provide the information requested below. The Report shall be prepared according to California legal format and shall contain the full case caption. The Report shall be typewritten or computer printed on pleading paper. Failure to file a Report as required or provide all requested information may result in exclusion or limitation of evidence, monetary sanctions, dismissal of the case, or entry of a default judgment.

All information requested below must be provided or its absence explained. Attachments may be used to provide additional information or to state the positions of each of the parties.

All discovery must be completed prior to trial. Delays will not be granted for the purpose of conducting further discovery except on a showing of good cause,

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to include but not limited to a showing of why discovery could not reasonably have been completed prior to trial.

The Trial Management Report and Brief shall include the following information.

2. ATTORNEY AND CASE INFORMATION

Case Name:

Trial Attorneys:

Plaintiff:

Telephone:

Defendant:

Telephone:

Additional Parties:

3. SUMMARY OF THE NATURE OF THE CASE

The Report shall include a summary of the allegations and supporting facts as contended by each party. It is anticipated that the trial Court shall use this information to acquaint itself with the competing allegations and contentions, the contested factual issues, and to inform the jury as to the nature of the proceedings. The summary shall be non-argumentative and concise.

4. STATEMENT OF ISSUES, CAUSES OF ACTIONS, AND DEFENSES

The Report shall include a listing of specific causes of action and defenses as contained in the pleadings.

5. TRIAL BRIEFS, PRETRIAL MOTIONS, AND MOTIONS IN LIMINE

The attorneys shall file all trial briefs, as necessary, with the Trial Management Report and Brief. In addition, the Report shall include a list of all requests for judicial notice, pretrial motions, motions in limine, and appropriate points and authorities.

6. DISCOVERY

Each party shall indicate whether discovery is completed. If discovery is not completed, the Report shall indicate why discovery has not been completed and shall specify the specific areas yet to be completed.

7. STIPULATIONS

Each party shall list agreed upon stipulations and any matter to which they are willing to stipulate.

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8. EXHIBITS

The Report shall include a list of all proposed exhibits. Each party shall file a declaration indicating any objections to the exhibits of the opposing parties with a brief statement of reasons. Failure to object to an exhibit shall be deemed a waiver of all objections thereto, and the exhibit may be entered into evidence without further argument. Objections to and editing of medical records shall be accomplished prior to trial, unless otherwise ordered by the Court. All proposed exhibits shall be pre-marked and exchanged and/or reviewed between the parties. Exhibits which are not pre-marked and exchanged shall not be admitted in evidence except on a showing of good cause, to include but not limited to, a declaration as to why said exhibit was not so marked and exchanged.

Any and all exhibits (including any demonstrative evidence, charts, posters, etc.) which are to be viewed by the jury before deliberations shall be identified. These exhibits shall be made available for review. If permitted by the Court, it shall be the duty of counsel to arrange for sufficient copies for each juror, enlargement, or viewing by overhead projector.

It is the responsibility of the parties to obtain and make available all equipment necessary to view any demonstrative evidence. Necessary equipment shall be available, set up, and approved by the Court.

9. DISCOVERY MATERIALS

The Report shall include a list of all depositions intended to be used during trial and any objections thereto. Original, signed depositions to be used during the trial shall be lodged with the courtroom clerk, on the first day of trial. Procedures for presenting the materials during the trial, shall be established by the Court.

10. VIDEO DEPOSITIONS

Parties shall indicate in the Report the intended use of any video depositions. The parties shall review video depositions prior to the preparation of the Trial Management Report and Brief. Objections shall be identified in the Report. The party intending to use a video deposition shall be responsible for editing of any further objections sustained by the Court. The Court shall be provided with an original, signed written transcript of the video deposition.

11. WITNESSES

Each party shall prepare a list of witnesses and the general nature of their testimony [e.g., percipient witness, character witness, expert witness on damages, etc.]. No witness, except a witness for purposes of impeachment, who has not been designated as a witness in the list above shall be allowed to testify except on a showing of good cause, to include but not limited to a showing of why that witness was not so designated. Any witness needing any special assistance shall be identified [e.g., interpreter, disabled, etc.].

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All witnesses are expected to be available as needed for trial. Any special scheduling problems shall be noted.

12. VOIR DIRE

The Report shall indicated the subject areas which the parties wish the Court to inquire into and those subject areas which the parties request to ask questions about themselves. Requests for a juror questionnaire or in camera questioning of a juror as to particular matters shall be indicated in the Report and a copy of the proposed questionnaire attached to the Report.

13. JURY INSTRUCTIONS

All proposed instructions shall be lodged with the Court with the Report. However, BAJI instructions which are requested without modification may be requested by number. BAJI 2.60 must be completed and modified as it pertains to the particular case. Proposed non-BAJI or modified BAJI instructions shall be submitted in duplicate. One copy shall be prepared on plain paper, separate from argument or authorities, and shall not indicate by whom the instructions are presented. At the close of evidence, the trial Court will conduct a hearing on instructions to determine the final instructions to be given to the jury.

14. VERDICT FORMS

Proposed verdict forms shall be filed with the Report. The verdict forms shall be prepared on plain pleading paper and shall not indicate by whom the verdict forms are presented. The trial Court will conduct a hearing to determine the final form of verdict.

15. OTHER REQUESTS: [list all additional requests]

(APPENDIX C, Adopted effective October 1, 1998; Amended effective July 1, 2001; Amended effective January 1, 2003)

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CHAPTER 7

LAW AND MOTION

7.01 LAW AND MOTION JUDGES

The Law and Motion Judges shall be designated by the Presiding Judge.
(Adopted effective October 1, 1998)

7.02 LAW AND MOTION CALENDAR

FAMILY LAW

Family Law and Motion matters are heard in Monterey, at 9:00 a.m., on Fridays.

Family Law and Motion matters *in pro per* are heard in Monterey, at 9:00 a.m., on Thursdays.

MEET AND CONFER FOR DOMESTIC LAW AND MOTION MATTERS

The moving party and the responding party, or his/her attorney if represented, shall each contact one another and attempt to resolve the issues raised in the moving papers prior to the date set for hearing, unless doing so would violate a restraining order in effect.

CIVIL

Civil Law and Motion matters are heard in Monterey, at 9:00 a.m., on Fridays.

(Adopted effective October 1, 1998; Amended effective July 1, 1999; Amended effective January 1, 2001; Amended eff. July 1, 2003)

7.03 MATTERS INCLUDED

- a) The Family Law and Motion Department shall handle, issue and sign all ex parte orders, orders to show cause, temporary restraining orders, and other family relations related Law and Motion matters.
- b) The Civil Law and Motion Departments shall handle issue and sign all orders in Civil Law and Motion matters. All ex parte motions and orders for injunction, writs of mandate, non-family law restraining orders, writs of prohibition, ex parte provisional remedies, such as attachments and appointment of receivers, shall be presented to the Civil Law and Motion Departments. (Adopted effective October 1, 1998)

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7.04 CONTINUANCES

- a) It is the policy of the Court not to continue law and motion matters, whether civil, domestic or probate, without good cause. The parties may, with good cause, stipulate twice to continue a law and motion matter for a reasonable amount of time not to exceed 60 days. The Clerk's Office must be notified of such stipulations at least two court days prior to the scheduled hearing.
- b) All other requests for stipulated continuances of law and motion matters must be made to the judge scheduled to hear the matter. The request must indicate good cause for the continuance, describe the basis for previous stipulated continuances, if any, and state the position of opposing counsel regarding the continuance. Failure to appear at the date and time set for hearing, may result in the matter being dropped from the calendar. (Amended effective July 1, 2003)

7.05 LONG MATTERS

Upon calling a Law and Motion matter, if it should appear that more than one-half hour will be required, the Court may refer the matter to the Presiding Judge for resetting or reassignment. (Adopted effective October 1, 1998)

7.06 FILING OF PAPERS

No uncontested civil matter shall be heard unless application is filed with the Clerk at least forty-eight (48) hours in advance thereof, unless an emergency exists which requires an earlier hearing. No matter shall be set unless all pleadings, stipulations and other necessary papers are on file with the Clerk and default, if required, has been entered. (Adopted effective October 1, 1998; Amended effective July 1, 1999)

7.07 TELEPHONE APPEARANCE IN CIVIL LAW AND MOTION HEARINGS

In accordance with the provision of Rule 298 of the California Rules of Court, counsel and unrepresented litigants shall have the option of appearing by telephone in any conference or non-evidentiary law and motion hearing, excluding settlement conferences. Teleconferencing is provided through Conference Call Service, a private vendor. Arrangements to schedule teleconferencing for a conference or hearing shall be made directly with Conference Call Service by calling 1-800-723-1220. A fee will be charged for this service and shall be payable directly to Conference Call Service. (Adopted effective July 1, 1999; Amended effective July 1, 1999; Amended effective July 1, 2004)

7.08 OBTAINING AN EXPEDITED ORDER AFTER HEARING OR STIPULATION.

If the attorneys or self-represented parties settle a matter at the time of the hearing or the judge makes a ruling, the parties may use the form entitled,

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"Stipulation and Order" to obtain an expedited Order After Hearing. The parties shall complete the form, sign it, and submit it to the Judge for signature. The clerk will file it and return the copies to the parties at the time of the hearing. This form is optional. The form is available either at the Clerk's office, Court's website or in the courtroom where the hearing is held. Child support orders must be accompanied by a Child Support Registry Form. (Adopted effective January 1, 2004)

7.09 PAGE LIMITATIONS FOR POINTS AND AUTHORITIES

- a) No memorandum of points and authorities filed in support of any motion, application, petition, etc., or in opposition thereof, in any type of case shall exceed 15 pages without prior approval of the court. [Except for motions for summary judgment or summary adjudication of issues.] The page limitation does not include declarations or exhibits incorporated by reference, indices, table of contents, table of authorities, documents required by California Rules of Court, Rule 335, the first page or proof of service.
- b) Applications for relief from the page limitation shall be in writing and shall be directed to the judge who will hear the motion, etc. The application must be accompanied by counsel's declaration showing good cause, including stating why more than 15 pages are needed for the argument. Application for relief shall be granted for good cause only. (Adopted effective October 1, 1998; Amended effective July 1, 1999)

7.10 SUMMARY JUDGMENT AND SUMMARY ADJUDICATION OF ISSUES

A. APPLICABILITY OF RULE; SANCTIONS

All motions for summary judgment or summary adjudication of issues must conform to the requirements of Code of Civil Procedure section 437c, the California Rules of Court and this and other applicable local rules. These requirements shall be strictly enforced by the Court. Sanctions shall be imposed for non-compliance. Sanctions may include monetary sanctions payable by counsel to the Court, to opposing counsel, or to both.

There is no procedure for a summary judgment or partial summary judgment on a single cause of action of a multi-cause of action complaint or cross-complaint. Summary adjudication of issues is the appropriate procedure for such relief.

B. MOTION FOR SUMMARY JUDGMENT

- 1) Burden on Moving Party Plaintiff. To prevail, a plaintiff or cross-complainant moving for summary judgment must establish by material facts as to which there is no substantial controversy every essential element of the moving party's claim(s) or cause(s) of action. These uncontroverted facts must establish that as a matter of law, the moving party is entitled to prevail.
- 2) Summary Judgment - Burden of Moving Party Defendant. To prevail, a defendant moving for summary judgment must establish by material facts as

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to which there is no substantial controversy that at least one essential element of plaintiff's claim(s) or cause(s) of action cannot be proven, or by such proof establish that a defense to plaintiff's cause(s) of action is perfected as a matter of law.

- 3) Documents in Support of Motion for Summary Judgment. The motion for summary judgment must contain and be supported by the following documents which are to be filed at the same time in this order:

- 1) Notice of Motion for Summary Judgment.
- 2) Separate Statement of Undisputed Material Facts in Support of Motion for Summary Judgment in the format prescribed by this rule;
- 3) Separate Declaration with Evidence in Support of Motion for Summary Judgment in the format prescribed by this rule;
- 4) Separate Request for Judicial Notice in Support of Motion for Summary Judgment (if appropriate);
- 5) Separate Memorandum of Points and Authorities in Support of Motion for Summary Judgment.

- 4) Separate Statement in Support of Motion for Summary Judgment. The separate statement of undisputed material facts in support of a motion for summary judgment must separately identify each claim, cause of action or defense, and each supporting material fact said to be without substantial controversy. In the side-by-side format illustrated below, the statement must set forth in numerical sequence the undisputed material facts and the evidence which establishes those undisputed facts. The material facts must be listed on the left-hand side of the page and the supporting evidence immediately opposite on the right-hand side of the page. Citation to the evidence in support of each material fact shall include reference to the exhibit, title, page and line number as shown in the example. The format for the separate statement in support of motion for summary judgment shall be as set forth on the following page.

- 5) Opposition to a Motion for Summary Judgment. Contents of Separate Statement. The opposition to a motion for summary motion must contain a separate statement, the format for which is described below at paragraph N., which responds to the moving party's Separate Statement of Undisputed Material Facts. Each material fact said by the moving party to be without substantial controversy must be set out verbatim on the left-hand side of the page. On the right-hand side of the page, directly opposite the recitation of the moving party's statement of material facts, the response must unequivocally indicate whether it is "disputed" or "undisputed" that the fact is without controversy. Where the opposing party contends that the fact is disputed, the party must state the nature of

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the disagreement and describe the admissible evidence which supports its position that the disagreement exists, citing exhibit, title, page and line number of the evidence so submitted.

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EXAMPLE

**SEPARATE STATEMENT OF UNDISPUTED MATERIAL
FACTS IN SUPPORT OF PLAINTIFF JONES'
MOTION FOR SUMMARY JUDGMENT**

Plaintiff Jones submits the following undisputed material facts with reference to supporting evidence pursuant to CCP 437c(b). By reason of these facts, every essential element of plaintiff's case is established, and it is shown that the defendant's defense(s) cannot prevail. Plaintiff is entitled to judgment as a matter of law.

UNDISPUTED MATERIAL FACTS:

First Cause of Action:

Breach of Contract: Essential Elements

1. Plaintiff Jones and defendant Smith reached an agreement whereby Smith would construct a house for Jones in exchange for Jones' payment to Smith for \$130,000. The contract called for Smith to complete construction of the house by March 11, 1987.
2. On December 15, 1986, prior to completion of the house's exterior framing, Smith stopped all construction on the house.
3. Smith never returned to the jobsite, despite numerous requests from Jones.

First Affirmative Defense:

Mitigation of Damages

4. Jones contacted five general contractors and solicited bids before contracting with Brown, whose bid was the lowest of the three bids submitted.

SUPPORTING EVIDENCE:

Admitted in defendant Smith's answer at 2:3-4. Declaration Plaintiff Jones, Exh. 1 at 2:1-13. Contract attached as Exh. 1(a).

Declaration of Jones, Exh. 1 at 3:1-15
Depositions of Smith
Exh. 3(b) at 31:4-14.

Declaration of Jones
Exh. 1 at 3:16-28.

Declaration of Jones,
Exh. 1 at 4:1-13.

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6) Documents in Support of Opposition to Motion for Summary Judgment. The opposition to a motion for summary judgment must consist of the following documents:

- 1) Separate Statement of Undisputed Material Facts in Opposition to Motion for Summary Judgment in the format prescribed below;
- 2) Separate Declaration with Evidence in Support of Opposition to Motion for Summary Judgment in the format prescribed by this rule;
- 3) Separate Request for Judicial Notice in Opposition to Motion for Summary Judgment;
- 4) Separate Memorandum of Points and Authorities in Opposition to Motion for Summary Judgment.

7) Format for Separate Statement in Opposition to Motion for Summary Judgment. The format for separate statement in opposition to motion for summary judgment shall be as set forth on the following page.

8) Moving Party's Failure to Meet Its Burden. Where in opposition to a motion for summary judgment it is contended that the moving party has failed to meet its burden of proof, either because the material facts stated by the moving party fail to establish an essential element or issue, or because the evidence fails to establish the material facts, this position should be stated on the right hand side of the page opposite the paragraph or paragraphs where such material facts or deficient evidence are set out in the moving party's separate statement.

9) Additional Disputed Facts. The opposing party's separate statement in opposition shall set forth any other material facts which the opposing party contends are disputed. Where the opposition is to a summary judgment motion, the additional disputed facts shall be set forth at the conclusion of the treatment of the moving party's facts. The additional disputed facts shall be supported by evidentiary references in the format previously described.

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EXAMPLE

**SEPARATE STATEMENT OF DISPUTED FACTS OF DEFENDANT
GEORGE SMITH IN OPPOSITION TO PLAINTIFF JONES'
MOTION FOR SUMMARY JUDGMENT**

Defendant George Smith submits this separate statement in opposition to plaintiff Jones' separate statement of undisputed material facts pursuant to CCP Section 437(b).

**PLAINTIFF JONES' MATERIAL FACTS
AND SUPPORTING EVIDENCE:**

First Cause of Action: Breach
of contract - Essential Elements

1. Plaintiff Jones and defendant Smith reached an agreement whereby Smith would construct a house for Jones in exchange for Jones' payment to Smith of \$130,000.00. The Contract called for Smith to complete construction of the house by March 11, 1987.
2. On December 15, 1986, prior to completion of the house's exterior framing, Smith stopped all construction on the house.
3. Smith never returned to the jobsite, despite numerous requests from Jones.

**DEFENDANT SMITH'S MATERIAL
FACTS AND SUPPORTING EVIDENCE:**

Undisputed.

Disputed.
Plaintiff's evidence was taken out of context. Later portions of the Smith disposition show that Smith began to complete. The exterior framing on December 18, 1986, but was instructed by plaintiff to leave the property and not return. Deposition of Smith, defendant's Exh. 2(a) at 31:15-27 and 32:1-15.

Disputed.
Smith returned to the jobsite on December 18, 1986, in an effort to complete the job. Plaintiff told him to leave and not return. Smith also returned to the jobsite on December 21, 1986, but plaintiff told him he was "off the job for good." Declaration of Smith, defendant's Exh.1 at 3:1-28 and 4:1-15.

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C. MOTION FOR SUMMARY ADJUDICATION OF ISSUES

- 1) Generally. A motion for Summary Adjudication of Issues may be made either separately or as an alternative to the motion for summary judgment. Where the motion is made as an alternative to the motion for summary judgment, the notice of motion and other required documents must state in their titles that the motion is one for summary judgment or in the alternative a motion for summary adjudication of issues. In either case, the notice of motion must specifically identify and number those issues said to be without substantial controversy.

Where the motion for summary adjudication is made independently, and not as an alternative to a motion for summary judgment, the motion must be supported by the same documents: as required for the summary judgment motion.

- 2) Identification of Issues. If summary adjudication of issues is sought, whether separately or as an alternative to the motion for summary judgment, the issues said to be without substantial controversy must be stated with care and precision in the notice of motion and be repeated, verbatim, in the separate statement of undisputed material facts.

The Court will not summarily adjudicate issues of fact.

- 3) Format for Separate Statement in Support of Motion for Summary Adjudication of Issues. The format for the separate statement in support of a motion for summary adjudication of issues shall be the same as for the motion for summary judgment (See Example on next page).
- 4) Opposition Motion for Summary Adjudication of Issues: Contents of Separate Statement. In the separate statement opposing a motion, or alternative motion for summary adjudication of the issues, the moving party's statement of issues must be set out verbatim.

Each material fact specified by the moving party as without controversy, together with the evidence said by the moving party to support that proposition, shall be set out on the left hand side of the page. On the right hand side of the page, directly opposite each statement of material fact, the opposing party must unequivocally indicate whether it is "disputed" or "undisputed" that the fact is without controversy. Where the opposing party contends that the fact is disputed, the party must state the nature of the disagreement and describe the admissible evidence which supports its position that the disagreement exists. The evidence should be set out on the right hand side of the page directly opposite the moving party's evidence and must be supported by citation to exhibit, title, page and line number of the evidence submitted.

- 5) Format for Separate Statement in Opposition to Motion (or Alternative Motion) for Summary Adjudication of Issues. The format for the separate statement in opposition to motion (or alternative motion) for summary

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adjudication of issues shall be the same as for the Motion for Summary Judgment.

- 6) Moving Party's Failure to Meet its Burden. Where in opposition to a motion for summary adjudication of issues, it is contended that the moving party has failed to meet its burden of proof, either because the material facts stated by the moving party fail to establish an essential element or issue, or because the evidence fails to establish the material facts, this position should be stated on the right hand side of the page opposite the paragraph or paragraphs where such material facts or deficient evidence are set out in the moving party's separate statement.
- 7) Additional Disputed Facts. The opposing party's separate statement in opposition shall set forth any other material facts which the opposing party contends are disputed. Where the additional disputed facts are in opposition to a motion or alternative motion for summary adjudication of issues, they should be set forth at the conclusion of the treatment of the moving party's facts in support of the particular issue said to be without substantial controversy. The additional disputed facts shall be supported by evidentiary references in the format previously described.

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EXAMPLE

**SEPARATE STATEMENT UNDISPUTED MATERIAL FACTS IN
SUPPORT OF DEFENDANT JONES' MOTION FOR
SUMMARY ADJUDICATION OF ISSUES**

Defendant Jones submits the following statement of issues and undisputed material facts relating to those issues, together with references to supporting evidence pursuant to CCP Section 437c(b).

ISSUE NUMBER 1: The anger and disturbance plaintiff Smith alleges to have suffered as a result of defendant Jones' acts does not constitute the severe emotional distress required for recovery under the theory of intentional infliction of emotional distress.

UNDISPUTED MATERIAL FACTS:

1. Plaintiff Smith did not seek medical care or treatment as a result of Defendant Jones' alleged acts.
2. Plaintiff Smith did not seek psychiatric treatment or any form of emotional or mental counseling as a result of Defendant Jones' alleged acts.
3. Plaintiff Smith took no prescribed medication or drugs following the alleged incidents.

SUPPORTING EVIDENCE:

Plaintiff Smith's answers to Defendant Jones' Request for Admissions Number 4, Exh. 1(a) at 3:4-7.

Plaintiff Smith's deposition, Exh. 1(b) at 26:3-10.

Declaration of Brown, Exh. 1 at 2:9-13, Authenticating Plaintiff Smith's deposition, Exh. 1(b) at 56:7-4.

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**D. EVIDENCE IN SUPPORT OF OR IN OPPOSITION TO MOTION FOR
SUMMARY JUDGMENT OR SUMMARY ADJUDICATION OF ISSUES**

1. FORMAT FOR PRESENTING EXHIBITS

- a) Identifying Exhibits. The exhibits shall be separated by hard paper sheets 8 1/2 inches by 11 inches with hard paper or plastic tabs extending below the bottom of the page bearing the exhibit designation assigned in the exhibit index.
- b) Declaration and Affidavits. Declarations and affidavits offered in support of or in opposition to a motion for summary judgment or summary adjudication of issue shall:
 - 1) Comply with Code of Civil Procedure Sections 2003 and 2012 (for affidavits be sure not to use an acknowledgment form of the jurat for the notary public) or Code of Civil Procedure Section 2015.5 (for declaration);
 - 2) State the facts which show that the affiant or declarant has personal knowledge of the facts set forth in the affidavit or declaration;
 - 3) State facts with particularity and not conclusions except where a proper foundation for the conclusion is established;
 - 4) Set forth the qualifications of any affiant or declarant who states an opinion as an expert.
- c) Documentary Evidence. The party relying on documentary evidence submit an affidavit or declaration which identifies and authenticates the document. The party must also comply with the best evidence rule or establish an exception to it with respect to the document.

A signed stipulation of the parties stating that copies of original documents are acceptable, will satisfy the best evidence rule.

A party may comply with the best evidence rule by bringing the original document to the hearing and presenting it for inspection. If the opposing party has not seen the original before, the opposing party should be invited to inspect the original before the hearing and a declaration to that effect should be filed.

Following this procedure avoids delay during the hearing but it does not excuse production of the original at the hearing except when the document's existence and content are admitted by verified pleadings, answers to interrogatories, or responses, or failure to respond to request for admissions. If the document's existence and contents have been admitted, the moving papers shall refer to the pleadings or discovery which contains the admission.

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- d) Discovery Products. A party relying upon answers to interrogatories, testimony at deposition, or responses to request for admissions shall submit an affidavit or declaration identifying and authenticating the answers, testimony, or responses.
- e) Depositions. The first page of any deposition used as an exhibit shall be the title page of the transcript indicating the name of the deponent and the date of the deposition followed by the relevant pages of the transcript. The name of the deponent shall appear on the bottom of each page of the transcript. The pages of the deposition shall constitute a single exhibit, and the hard paper sheet which precedes it must bear a tab setting forth the letter/number designation.
 - 1) The exhibit shall contain only the relevant pages of the transcript;
 - 2) The page number must be clearly visible;
 - 3) The material portions of the deposition testimony shall be highlighted.
- f) Exhibits to Discovery Products. Each exhibit to a deposition, or to answers to interrogatories, or requests for admissions must be treated as a separate exhibit.

2. JUDICIAL NOTICE

Any request for judicial notice shall be made in a separately captioned document listing the specific items of which notice is requested and stating the authority for the request. Copies of these items shall be attached to the request as exhibits.

Where judicial notice of a local county court file is requested, the party requesting the notice shall arrange for the file to be in the courtroom at the time of the hearing. Where the file sought to be noticed is that of an action outside the local county, certified copies of the appropriate file contents will be acceptable in lieu of the original file.

E. OBJECTIONS TO EVIDENCE

Any objections to evidence in support of or in opposition to motions for summary judgment or summary adjudication of issues may be raised either in papers submitted to the court, or orally at the time of the hearing. (Adopted effective October 1, 1998; Amended effective July 1, 1999)

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7.11 EX PARTE APPLICATIONS

Ex parte applications in civil cases should be filed with the court clerk, directed to the attention of the Supervising Judge, Civil Division. (It is suggested that the moving party telephonically notify the clerk to the Supervising Judge of the filing, to facilitate tracking.)

As part of the application, the moving party shall submit to the Court a declaration stating the date and time of service on the opposing party of the moving papers.

The notice of ex parte application which is served on the opposing party, must contain the following information: (1) neither party is expected to appear when the application [or opposition] is submitted to the Court; (2) opposition to the ex parte application must be received by the Court within 24 hours of service of the moving papers on the opposing party.

After allowing time for receipt of opposition, the court may set the matter for hearing, or issue a ruling based on the written application and any opposition it has received.

The moving party should submit an order for the Court's signature along with the ex parte application. (Adopted effective January 1, 2004)

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CHAPTER 8

ATTORNEY FEES - DEFAULT AND UNCONTESTED MATTERS

8.01 SCHEDULE OF ATTORNEY FEES

If the obligation sued upon provides for the recovery of a reasonable attorney's fee, the fee in each default case and in each case where judgment is rendered pursuant to Section 585 (1) of the Code of Civil Procedure, may be fixed pursuant to the following schedule:

<u>Principal Amount of Judgment</u>	<u>Attorney's Fee</u>
Under \$2,000	25 percent
Under \$2,001.01 to \$5,000.00	20 percent or \$500.00 - whichever is greater
\$5,000.01 to \$10,000.00	15 percent or \$1,000.00 – whichever is greater
\$10,000.01 to \$25,000.00	12 percent or \$1,500.00 - whichever is greater

On judgments in excess of \$25,000.00 the attorney's fee may be 10 percent of the principal amount between \$25,000.00 and \$50,000.00, and 5 percent of any additional sum.

Plaintiff shall have the right, in accordance with Section 585 (1) of the Code of Civil Procedure, to have the attorney fee fixed by the Court in an amount different than as set forth above. (Adopted effective October 1, 1998)

8.02 REQUEST FOR ATTORNEY FEES IN UNLAWFUL DETAINER ACTIONS

In unusual cases, attorneys may apply to the Court by written motion with supporting documents for fees in excess of the above schedule.

If the obligation sued upon provides for recovery of reasonable attorney fees, the Court may allow a \$450.00 fee to the prevailing party in an unlawful detainer default hearing. In unusual cases, attorneys may apply to the Court, by motion, for increased fees. (Adopted effective October 1, 1998)

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CHAPTER 9

APPELLATE DEPARTMENT

9.01 JURISDICTION

The Appellate Department of the Superior Court of California, Court of Monterey has jurisdiction over all appeals arising out of Courts in Monterey County, all motions and all petitions for stays in connection with such appeals. (Code of Civil Procedure, Sec. 77, subd. (e)). (Adopted effective October 1, 1998; Amended eff. July 1, 2003)

9.02 JUDICIAL ASSIGNMENT

Four judges are assigned to the Appellate Department, generally three of whom participate in each matter, with the concurrence of two judges required for the decision in each case. (Code of Civil Procedure, Sec. 77, subd. (d).) (Adopted effective October 1, 1998)

9.03 PRACTICE POINTERS

These rules supplement the applicable code sections and California Rules of Court. Litigants are advised to research and follow case reports and secondary authorities which apply and interpret the codes and rules.

- a) Civil Cases -- See Code of Civil Procedure, Sec. 904.2 [appealable judgments and orders] and California Rules of Court, rules 101-108, 121-141, 152-158.
- b) Criminal Cases -- See Penal Code Sec. 1466 [appealable judgments and orders] Sec. 1510, [time of motions in Court] and Sec. 1538.5, subds. (j) and (m) [pretrial and post-trial review of suppression orders] and California Rules of Court, rules 101 through 108 and 181 through 191. (Adopted effective October 1, 1998)

9.04 NOTICE OF APPEALS

A timely notice of appeal is a jurisdictional requirement to a valid appeal. (California Rules of Court, rules 122-123 [civil appeals], rule 182 [criminal appeals].) The notice of appeal should be filed with the Court. (California Rules of Court, rules 121(a), 182(a).) Requests for relief from the filing of a late notice of appeal and motions to dismiss on grounds of an untimely notice of appeal must be filed in the Appellate Department. (Adopted effective October 1, 1998)

9.05 STAYS PENDING APPEAL

- a) Civil Appeals. Only the Court may order a stay before a notice of appeal is filed. (Code of Civil Procedure, Sec. 918.) A party seeking a stay from the Appellate Department must first file a notice of appeal with the Court.

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- b) Criminal Appeals. A defendant's application for bail must first be made with the Court. (See Penal Code, Secs. 1272, 1272.1, California Rules of Court, rule 32.) defendant's motion for stay of execution of the judgment must first be made with the Court. (See Penal Code, sec. 1467, California Rules of Court, rule 32.) (Adopted effective October 1, 1998)

9.06 PLEADINGS

All motions and petitions must comply with California Rules of Court. (Adopted effective October 1, 1998)

9.07 APPOINTMENT OF COUNSEL IN CRIMINAL CASES

Applications for appointed counsel on appeal in criminal cases must be filed with the Appellate Department after a notice of appeal is filed with the Court. After the record on appeal is filed with this Department, the clerk will send a letter to unrepresented defendants in criminal cases inquiring whether that defendant wishes court-appointed counsel. Appointment of counsel in a criminal case is by the court, which selects the attorney from its list of qualified candidates. (See California Rules of Court, rule 76.5.) (Adopted effective October 1, 1998)

9.08 WRIT OF SUPERSEDEAS

A petition for writ of supersedeas must be served and filed in accordance with California Rules of Court, rule 104(a). (See California Rules of Court, rule 140.) A petition for writ of supersedeas will not be granted in civil cases unless exceptional circumstances exist or where the judgment may not be stayed by posting a bond. (See Code of Civil Procedure, secs. 916 et seq.) (Adopted effective October 1, 1998)

9.09 RECORD ON APPEAL

- a) The "record on appeal" is generally determined by the parties and includes a clerk's transcript (California Rules of Court, rules 125, 183) or equivalent (California Rules of Court, rule 126) and may include a reporter's transcript (California Rules of Court, rules 124, 126, 127, 184) or its equivalent. (California Rules of Court, rules 126, 127.) The record is both designated and prepared with the Court.
- b) Parties must comply with court rules with respect to the method and time limits for providing a record (California Rules of Court, rules 124-132, 183-187.5), and except as provided by the rules, are responsible for assuring that the record needed for review is paid for and prepared. (Adopted effective October 1, 1998)

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9.10 FEES FOR CLERK'S TRANSCRIPT - CIVIL APPEALS

Appellant must designate and pay the fees for the documents to be included in the clerk's transcript. (California Rules of Court, rule 125(a). (Adopted effective October 1, 1998)

9.11 EVIDENTIARY MATTERS AND EXHIBITS

Parties relying on evidentiary matters or on exhibits must include either a reporter's transcript (California Rules of Court, rule 124) or written transcript of electronic recording (California Rules of Court, rule 980.5), an agreed statement (California Rules of Court, rule 126) or a settled statement (California Rules of Court, rule 127) of the relevant oral proceedings. (Adopted effective October 1, 1998)

9.12 CLERK'S TRANSCRIPT - CRIMINAL APPEALS

A record on appeal (clerk's transcript) will be prepared by the Clerk of the Court without request or payment by appellant. (California Rules of Court, rule 183.) (Adopted effective October 1, 1998)

9.13 AUGMENTATION OF TRANSCRIPT

An appellant may request that the clerk's transcript be augmented with additional documents. (California Rules of Court, rule 189.) (Adopted effective October 1, 1998)

9.14 STATEMENT ON APPEAL

An appellant relying on evidentiary matters must submit a proposed statement on appeal, which must include at a minimum a specification of the grounds on appeal. (California Rules of Court, rule 184(b).) (Adopted effective October 1, 1998)

9.15 RECORD OF PROCEEDING

Parties relying on evidentiary matters must obtain a record of the proceedings by:

- 1) Serving and filing a proposed statement that includes a narrative summary of the relevant oral proceedings and the grounds on appeal, or,
- 2) Serving and filing a proposed statement listing the grounds on appeal and giving notice that a reporter's transcript or written transcript electronic recording (California Rules of Court, rule 980.5) will be relied on. (California Rules of Court, rule 184(a).) (Adopted effective October 1, 1998)

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9.16 REPORTER'S TRANSCRIPT

Appellant must request a reporter's transcript directly from the reporter or a written transcript of an electronic recording from the Court. An appellant requesting a reporter's transcript at court expense must apply to the Court within the time limits authorized for submitting a proposed settled statement. (See California Rules of Court, rule 184(d).) (Adopted effective October 1, 1998)

9.17 PROPOSED ADDITIONS OR CHANGES TO TRANSCRIPT OR STATEMENT

A respondent is entitled to propose changes or additions to the statement and/or transcript. (California Rules of Court, rule 185.) The Court will settle the statement and/or transcript, with notice to the parties and an opportunity to appear. (California Rules of Court, rule 187.) (Adopted effective October 1, 1998)

9.18 EXTENSIONS OF TIME

- a) Applications for extensions of time that cannot be granted by the Court or that are denied by the Court may be directed to the Presiding Judge of this Department. (California Rules of Court, rules 137, 186.)
- b) All applications to be relieved from default for failure to act within the allowed time periods must be submitted as a written motion with service on all parties. (California Rules of Court, rules 104, 143(b).) (Adopted effective October 1, 1998)

9.19 BRIEFS

- a) Following the filing of the record on appeal, the court will issue an order fixing specific dates by which briefs should be filed. (See California Rules of Court, rule 105(a) for the allowed time for opening, responding, and reply briefs.)
- b) Briefs must comply in form with California Rules of Court, rule 105. The original brief submitted for filing must be accompanied by three copies.
- c) No brief shall exceed 15 pages in length except by permission of the Presiding Judge of the Appellate Department. (See California Rules of Court, rules 137 and 105(d).)
- d) A copy of all briefs must be served on opposing counsel and on the Court. (California Rules of Court, rules 105(e), 105(f).)
- e) Failure to file an appellant's opening brief constitutes a ground for dismissal of the appeal. (California Rules of Court, rule 133(c); rule 190.)
- f) Failure to file a respondent's brief may be treated by the court as an admission that the appeal is meritorious. (Adopted effective October 1, 1998)

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9.20 ORAL ARGUMENT

Argument will be set normally on four weeks advance notice.

Routine application should be served on opposing counsel and are submitted to the Presiding Judge of the Appellate Department. (California Rules of Court, rules 102, 137, 186.)

A party who is not present at calendar call is deemed to have waived oral argument unless the party has advised the clerk in advance of a delay.

Continuances will not be granted without a showing of good cause.

Continuances by stipulation are subject to the approval of the Presiding Judge of the Appellate Department.

Motions of an attorney to withdraw as counsel of record must comply with the requirements of Code of Civil Procedure, sections 284 and 285 and California Rules of Court, rule 139(b).

Supplemental briefing will be permitted when, after argument, the court intends to decide a case upon the basis of an issue not briefed or proposed by any party. (Government Code Sec. 68081.) (Adopted effective October 1, 1998)

9.21 OPINION AND JUDGMENT

The court must decide a case within 90 days after submission. (California Constitution, Art. 6, Sec. 19.)

The court will generally file an opinion or statement of reasons with each decision, although not required to do so. (See California Rules of Court, rule 106.) (Adopted effective October 1, 1998)

9.22 PUBLICATION

An opinion is published in whole or in part in the Official Reports when a majority of the court in the Appellate Department certifies that it meets one or more of the standards set forth in California Rules of Court, rule 976(b), and a Court of Appeal does not order the case transferred to it for hearing and decision. (California Rules of Court, rules 976(c), 62(a).) (Adopted effective October 1, 1998)

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9.23 REHEARING AND/OR CERTIFICATION

A petition for a rehearing must be served and filed with proof of service within 15 days after the judgment is pronounced. An answer to the petition may be served and filed within eight days after service of the petition. (California Rules of Court, rule 107(c).)

If a rehearing is ordered, the Appellate Department will ordinarily place the case on calendar for further argument but may resubmit the matter for decision. (California Rules of Court, rule 107(c).)

Any party may move the court to certify or the court on its own motion may certify that the transfer of a case to the Court of Appeal appears necessary to secure uniformity of decision or to settle important questions of law. (California Rules of Court, rule 63(a).)

Judgments of the Appellate Department are not appealable. (Code of Civil Procedure, Sec. 904.1(a)(3); Penal Code, Secs. 1237, 1238.)

A party may request review by the Court of Appeal by way of writ. (Adopted effective October 1, 1998)

9.24 MOTIONS AND APPLICATIONS

Routine applications should be served on opposing counsel and are submitted to the Presiding Judge of the Appellate Department. (California Rules of Court, rules 102, 137, 186.)

Applications on routine matters should not exceed five (5) pages, and must include a declaration under penalty of perjury.

Written motions with service on all parties must be filed in connection with all contested or non-routine matters or where a party is in default. (California Rules of Court, rules 104, 143(b).)

Motions of an attorney to withdraw as counsel of record must comply with the requirements of Code of Civil Procedure, sections 284 and 285 and California Rules of Court, rule 139(b).

An appeal in a criminal case is abandoned by filing a written abandonment of such appeal. (California Rules of Court, rule 188.)

An appeal in a civil case may be abandoned before the record is filed by filing a written abandonment. After the record is filed, the parties must stipulate or the appellant must file a written request with service on all parties. (California Rules of Court, rules 133(a) and (b).)

Civil motions filed before the Appellate Department have received the record on appeal must be accompanied either by a completed "Certificate of Clerk re Civil

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Motion to Appellate Department," certified by the Court, or by documents sufficient to permit review. (Adopted effective October 1, 1998)

9.25 INFRACTIONS

The failure of the Court to settle the statement on appeal, if one is submitted, will result in reversal or dismissal of the case. (People v. Bighinatti, 55 Cal.App. 3d Supp. 5.)

Trial courts should comply with the procedure set forth in People v. Jenkins, 55 Cal.App.3d Supp. 55.

Appellants are warned that the Court is not under existing law required to mail or deliver to the appellant a copy of the certified statement on appeal.

Appellants should obtain a copy of the certified engrossed or settled statement before preparing a brief.

The Court herein adopts the Judicial Council Approved Forms (Revised January 1, 1999) for use in infraction appeal matters. (Adopted effective October 1, 1998; Amended effective July 1, 2000)

9.26 WRITS

Writs involving custodial institutions and parole or probation must be addressed to the writ judge.

Petitions for a writ of mandate, prohibition, certiorari, habeas corpus or supersedeas from the Court must be addressed to the Presiding Judge of the Appellate Department.

All other writs must be addressed to the judge assigned to the law and motion departments.

The petition must be served on all parties and the Presiding Judge of the Court.

Petitioner must file the original petition with proof of service attached in the office of the Clerk of the Court in Monterey, with a proposed alternative and peremptory writ with the Clerk of the Court. The clerk will then hold the petition for opposition for five days if the petition was personally served or ten days if service was by mail.

There is no filing fee in a criminal case. The filing fee for a civil petition is the same as that in the schedule for filing of civil cases.

The judge may continue the matter and request supplementary documents or preliminary opposition, summarily deny the petition, notify the parties of the

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judge's intent to issue the peremptory writ, or issue an alternative writ or order to show cause and set the matter for a hearing.

If an alternative writ is issued, petitioner must serve the writ on all other parties. (See Code of Civil Procedure, Sec. 1096.)

An order granting or denying a petition for writ of mandate or prohibition is not appealable (Code of Civil Procedure, Sec. 904.1, subd. (a)(4)), although the Court of Appeal in its discretion may review the judgment.

A writ petition generally must be filed within the statutory period for an appeal.

Petitioner is obliged to furnish an adequate record for review.

A writ petition must comply with all statutory requirements. (See Code of Civil Procedure, Secs. 1067-1108.) (Adopted effective October 1, 1998; Amended effective July 1, 2000)

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CHAPTER 10

FAMILY LAW DEPARTMENT

10.01 LAW AND MOTION

A. LAW AND MOTION CALENDAR

1. Family Law and Motion and Pro Per Calendars. There shall be a Family Law and Motion Calendar and a Pro Per Calendar which shall be heard at the time and place set by the Court.
2. Meet and Confer. The moving party and the responding party, or his/her attorney if represented, shall each contact the other and attempt to resolve the issues raised in the moving papers prior to the date set for hearing, unless to do so would violate a restraining order then in effect.
3. Continuances. It is the policy of the Court not to continue law and motion matters without good cause. Either party may, with good cause, stipulate once to a continuance for a reasonable amount of time not to exceed 30 days. Any subsequent requests for continuances are subject to approval by the Family Court Judge. All requests must be submitted to the research attorney for the Family Court at least a full 48 hours prior to the date of hearing. The request must indicate good cause for the continuance and state the position of the opposing party regarding the continuance as well as the requested date.

B. TIMELY FILING OF PAPERS

1. General Rules. California Rules of Court, Rule 317, require at least 21 calendar days notice (26 days if by mail-motions only) on all motions or Orders to Show Cause without Temporary Orders. Hearings shall be calendared in order that such notice is received unless an Order Shortening Time has been obtained.

Orders to Show Cause which include Temporary Orders or Temporary Restraining Orders (CLETS) must be set no later than 20 calendar days from the date issued. For good cause, which shall be stated by declaration, this period can be extended to up to 25 days. Family Code section 242.

If an order shortening time is obtained but there is not sufficient time prior to the hearing to allow adequate preparation, the Court may make temporary orders at the initial hearing and continue the matter for further hearing. (Adopted effective October 1, 1998).

2. Orders Shortening Time. Orders Shortening Time should not be requested unless there is a hardship or emergency requiring prompt action. All requests must be accompanied by a written declaration establishing GOOD CAUSE. Notice of the request must be given to opposing counsel, if

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any, within 24 hours, except for good cause. A declaration must be submitted stating the fact of notice or good cause for its absence.

3. Responsive and Reply Documents. Responsive and Reply documents must be filed and served as follows:
 - a. Motions and Orders to Show Cause without Temporary Orders Attached - at least 10 calendar days prior to the hearing for Responsive Declarations and 5 calendar days prior to the hearing for Reply Documents.
 - b. Orders to Show Cause with Temporary Orders Attached - 5 court days prior to the hearing for Responsive Declarations and 2 court days prior to hearing for Reply Declarations.
 - c. Orders Shortening Time - The Responsive and Reply Declarations must be filed and served as set forth in the order.

At the time of the hearing, the court may refuse to consider Responsive or Reply documents which are not filed and served within the time frames specified in this rule.

4. Obtaining an Expedited Order after Hearing or Stipulation. If the attorneys or self-represented parties settle a matter at the time of the hearing or the judge makes a ruling, the parties may use the form entitled, "Stipulation and Order" to obtain an expedited Order After Hearing. The parties shall complete the form, sign it, and submit it to the Judge for signature. The clerk will file it and return the copies to the parties at the time of the hearing. This form is optional. The form is available either at the Clerk's office, Court's website or in the courtroom where the hearing is held. Child support orders must be accompanied by a Child Support Registry Form.

5. Dissolution Judgment Cover Sheet. A Dissolution Judgment Cover Sheet is required to be filed at the time a request for hearing is submitted to the Clerk. The cover sheet shall be completed based on the type of dissolution. An incomplete cover sheet will be returned to the submitting party along with all the attached documents. The Dissolution Cover Sheet is available at the office of the Clerk of the Court and on the Court's website.

C. EX-PARTE ORDERS

1. All applications for ex parte orders in Family Law matters shall be made to the Family Law Judge, or, in his or her absence, to the Presiding Judge or his or her designee.
2. Absent a written declaration establishing good cause, 24 hours prior notice of the ex parte request must be given to opposing party. The fact of notice and/or reasons for the failure to give notice to the opposing

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party should be stated in the declaration in the application for an ex parte order.

3. The application, proposed orders and any supporting documents should be submitted to the Family Law Judge for review prior to the time set for the ex parte hearing.
4. Declarations requesting a party to be excluded from the family home must include the factual basis establishing actual violence or a real threat of violence. Conclusionary allegations are not sufficient. Declarations requesting temporary custody orders must establish good cause for the order.
5. If the Declarations in Support of the Ex Parte Order are false or intentionally misleading, attorneys fees or sanctions may be awarded pursuant to California Rules of Court, Rule 227, and Code of Civil Procedure section 575.2.

D. SPECIAL SETTINGS

All matters requiring more than 20 minutes must be specially set. Calendaring of special sets shall be done by a family law bench officer. A request for a special set hearing must be calendared by motion or, if a matter is already set on the Law and Motion Calendar, the request should be made at the time already scheduled for hearing. Advance notice should be given to the Court that a special set will be requested by written declaration if possible. Requests for special sets should not be made unless the matter is ready to be heard and should include a time estimate regarding the length of hearing requested. Continuances of special settings will not be granted except upon exceptional good cause.

E. USE OF DECLARATIONS

1. Declarations in lieu of Testimony. In all law and motion matters, declarations shall be submitted in lieu of testimony pursuant to California Rules of Court, Rule 323. Testimony shall be received only upon a showing of good cause.
2. Evidence, Arguments or Comments. Evidence, argument or comments will not be heard unless clearly raised in timely filed pleadings. Argument, if requested by the Court at the time of hearing, shall only address points of law. Timely filed declarations shall be considered the evidence submitted.
3. Review Hearing Declarations/Supplemental Declarations.
 - a. If a matter is set for a review hearing, a declaration describing the current status of the matter should be submitted by each party as set forth in the next paragraph. If no declaration is filed, the matter may be dropped at the discretion of the court.

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- b. Supplemental Declarations/Declarations for review hearings must be filed and received by the opposing party at least five (5) court days prior to the date set for review or hearing. Any reply to such declarations must be filed and received by the opposing party no later than two (2) court days prior to the date of the hearing or review.
- c. The court may not consider declarations or reply declarations which are not filed and received within the time frame specified in this rule.

F. ATTORNEY FEES AND EXPERT WITNESS FEES

Orders for attorney fees, costs or expert witness fees by one party from the other will not be deferred until the time of trial except upon agreement or a showing of GOOD CAUSE. It is the policy of the Court to support each party's right to be adequately represented pending trial. No temporary award of attorney fees or costs shall be made without a showing of need and ability to pay, and until sufficient proof of each party's income has been filed with the Court. (Adopted effective October 1, 1998; Amended effective July 1, 2000; Amended effective January 1, 2004)

10.02 SETTLEMENT CONFERENCES

A. MANDATORY V. NON-MANDATORY

All long cause (more than 1 day in length) Family Law trials will be set for Mandatory Settlement Conference by the Court. Upon request of both parties or court order, short cause trials (one day or less in length) shall be set for settlement conference. With agreement of counsel and advance permission of the Court, litigants and/or their attorneys may attend settlement conferences telephonically. Arrangements shall be made at least five (5) court days in advance.

B. MEET AND CONFER

Counsel shall confer with opposing counsel, or opposing party if that party is unrepresented by counsel, no less than five (5) court days prior to the first date set for settlement conference. Counsel shall inform the Court of all issues that can be determined by stipulation and those remaining for determination by the Court in the Settlement Conference Statement filed with the Court. The Settlement Conference Statement shall also state that the parties have complied with this rule. Non-compliance may result in the matter being dropped from calendar.

C. SETTLEMENT CONFERENCE STATEMENT

- 1. Service. Settlement Conference Statements shall be served and filed with the Clerk of the Court no later than five (5) court days preceding the Settlement Conference. Service shall comply with the provision of local rule 12.06(d). Failure to comply with this rule may result in an award of attorney fees or sanctions pursuant to California Rules of Court, Rule 227, and Code of Civil Procedure section 575.2.

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2. Contents. The statement must set forth the following information as to the party filing, as well as to the opposing party, to the extent known or contended:
 - a. Separate Property. List each item of separate property. If characterization of property is uncontested, list only its current market value. If characterization of property as separate is contested, list the date it was acquired, the basis upon which it is claimed that it is separate rather than community property, the current market value, the nature, extent and terms of payment of any encumbrance against the property and the manner in which title thereto is presently vested.
 - b. Community Property. List each item of community property. If characterization of property is uncontested, list only its current market value and the nature, extent and terms of payment of any encumbrance against the property. If characterization of property as community is contested, list the date it was acquired, the basis upon which it is claimed as community rather than separate property, the current market value, the nature, extent and terms of payment of any encumbrance against the property and the manner in which title thereto is presently vested.
 - c. Funds Held by Others. To the extent that either separate property or community property consists of funds held by others, such as insurance policies, pensions, profit sharing, or other trust funds, the statement shall fully identify the policy or fund, its present cash value and any terms or conditions imposed upon withdrawal of such values.
 - d. Tracing. If a segregation of community property and separate property interests in a single asset is to be an issue in the case, the statement shall set forth in detail, including dates, values and dollar amounts, the transactions which form the basis upon which the tracing is to be proven.
 - e. Current Obligations. Separately list all debts and obligations of the parties which constitute liabilities of the community and debts and obligations which are the separate liabilities of the respective parties. Specify the identity of the creditor, the date upon which the debt was incurred, the balance currently due thereon, the terms of payment and the security, if any, held by the creditor.
 - f. Proposal for Settlement. Set forth a proposal for settlement, including proposals regarding custody, visitation, division of the community property and liabilities, reimbursements, credits, payment of costs and payment of attorney's fees. In addition, specify each party's contentions as to the amount and duration of child and spousal support. The purpose of this rule is to promote amicable settlement

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and thorough preparation of domestic relations matters. Full disclosure of all contested issues will aid the court in suggesting a fair settlement, ease tension between the parties and help to provide a more meaningful resolution. Counsel should confer prior to the time set for settlement conference or trial in order that, to the fullest extent possible, issues can be determined by stipulation and those remaining for determination by the Court can be clearly delineated.

3. Declaration of Disclosure. A Declaration Regarding Service of Preliminary and Final Declaration of Disclosure should be filed by each party verifying that there has been an exchange of information regarding assets, liabilities and income as required in Family Code section 2100-2110.
4. Current Income and Expense Declaration. A CURRENT Income and Expense Declaration should be filed concurrently with the Settlement Conference Statement. The parties' last three month's earnings and deduction statements shall be attached.
5. Setting at the Court's Discretion. At the Court's discretion, settlement conferences, case management conferences, and trial setting conferences may be set by the Court. (Adopted effective October 1, 1998; Amended effective July 1, 1999; Amended effective July 1, 2000; Amended effective July 1, 2001)

10.03 CHILD AND SPOUSAL SUPPORT

A. CHILD SUPPORT

The amount of child support awarded will be determined according to the guidelines set forth in Family Code Section 4050 et seq. The percentage of time each party spends with the child(ren) shall be calculated by counting the number of hours that the children spend with each party divided by the total hours for the time period in question.

1. Credit for Time Spent with Others. It is a rebuttable presumption that the parent who drops off and picks up the child shall receive the hourly credit for that period of time the child is with someone other than a parent. If one parent drops off and the other parent picks up, then the time is to be divided equally.

B. SPOUSAL SUPPORT

Temporary spousal support will ordinarily be determined in accordance with Santa Clara County's Temporary Spousal Support Guidelines; the Court may order non-Guideline temporary spousal support upon a showing of good cause. The Court may order a party to pay for the permanent support of the other party an amount, and for a period of time that the court determines just and reasonable, based upon the standard of living established during the marriage, taking into consideration the factors specified in Family Code section 4320.

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C. INCOME AND EXPENSE DECLARATIONS

Income and Expense Declarations must be filled out completely by both parties. The last three months' earning and deduction statements shall be attached. A current Income and Expense Declaration must be on file any time there is a request for a monetary award from the other party.

D. DEPARTMENT OF CHILD SUPPORT SERVICES

All cases in which the Department of Child Support Services is involved in establishing or enforcing child support shall be set on the Department of Child Support Services Calendar when appropriate. (Adopted effective October 1, 1998; Amended effective July 1, 1999; Amended effective July 1, 2000; Amended eff. July 1, 2003)

10.04 OFFICE OF FAMILY LAW FACILITATOR

The Family Law Facilitator shall perform the duties listed in Family Code Section 10004, and may perform any and all of the duties listed in Family Law Section 10005 as directed by the Court. (Adopted effective October 1, 1998; Amended effective July 1, 2000)

10.05 CO-PARENTING PROGRAM

A. PURPOSE OF CO-PARENTING PROGRAM

The purpose of the program is to assist parents to better understand their children's point of view, to learn new ways to help their children through parental separation, to acquire new skills in interacting with their children and the other parent, to reduce acrimony between family members and to help parents identify when their children may be in need of further assistance in coping with parental separation.

B. REQUIREMENT TO ATTEND CO-PARENTING PROGRAM

All parties to a Family Law proceeding in which there are minor children, including, but not limited to, actions for dissolution, legal separation, actions to establish paternity, or actions to establish or modify custody or visitation, shall attend and complete the co-parenting program.

For Family Law cases commenced after the effective date of this rule, attendance by the parties shall be prior to mediation provided through Family Court Services or prior to the expiration of sixty (60) calendar days after service of the pleadings that commence the proceedings, whichever is earlier. All parties to Family Law cases commenced prior to the effective date of this rule must attend the co-parenting education program when seeking to establish or modify custody or visitation orders. Attendance by all parties shall be prior to mediation and prior to hearing. A waiver of prior attendance may be obtained by court order.

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Nothing in this rule supersedes the right of the parties to seek ex parte relief as provided in these Rules prior to attending the co-parenting program. Notice of the ex parte request must be given to the opposing party absent a declaration establishing good cause. The declaration must state the basis for the urgency.

C. PAYMENT OF REGISTRATION FEES AND SERVICE OF FORMS

Written instructions regarding the attendance, registration and payment of the fee for the program shall be provided by the Clerk of the Court to any party filing to commence an action designated above or to modify a previous order. A copy of these written instructions shall be served on the opposing party by the filing party at the time of service of the above-described documents and a Proof of Service shall be filed with the Court.

The fee will not normally be waived; however, application may be made to the program for a fee adjustment if the applicant is receiving public assistance payments.

D. FAILURE TO ATTEND AND REMEDIES

A date for mediation may not be set until both parties have attended the co-parenting program. However, if both parties have not attended and completed the co-parenting program, the party who has attended the co-parenting program may apply to the Court for an order or judgment after a default has been entered. If the Court allows any order or judgment to be entered for good cause when one party has not completed the co-parenting program, the non-complying party may not seek any affirmative relief regarding child custody or visitation until that party has completed the program, or has obtained leave of Court to proceed by application to the Court upon a showing of good cause.

E. DOMESTIC VIOLENCE OR CHILD ABUSE

Due to the complexity of issues in cases in which there are incidents of domestic or child abuse, attendance in the program shall occur only upon order of the court. If the Court has ordered attendance, the restrained party and protected party shall be scheduled to attend separate sessions of the program.

F. OUT OF COUNTY/STATE RESIDENTS

If a party resides in another county or state, the Court may require or allow attendance by a party at an equivalent co-parenting program located in another county or state if attendance at the local co-parenting program is found to be a hardship to that party. The party who requests attendance elsewhere, shall have the burden of providing information regarding the other program to the Court as part of his/her application.

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G. CERTIFICATE OF ATTENDANCE

The provider of the co-parenting program shall prepare and file with the Clerk of the Court a certificate of attendance verifying the completion of the program by each attending party. The provider shall also provide verification to each party upon completion of the co-parenting program.

H. NON-ENGLISH SPEAKING PARTICIPANTS

The program shall be offered in English and in Spanish. A participant who speaks a language other than Spanish or English may arrange at his/her own expense to have an interpreter attend with him/her. No additional program fee shall be charged for the attendance of such an interpreter. (Adopted effective July 1, 1999; Amended effective January 1, 1999; Amended effective July 1, 2000)

10.06 GUIDELINES FOR MEDIATION OF CHILD CUSTODY AND VISITATION DISPUTES

A. PREAMBLE

Child custody and visitation mediation is a program administered by the office of Family Court Services. Since the mediation program was established in the Monterey County Superior Court in February 1981, it has resulted in the successful mediation of numerous child custody and visitation disputes and has assisted many parents in learning to deal with parenting roles in a time of emotional tension.

Mediation is provided in a number of different proceedings involving the custody and visitation of a minor. These proceedings include: 1) Dissolution and Legal Separation (Family Code section 3170), 2) Stepparent Visitation (Family Code sections 3171, 3172, 3185); 3) Grandparent Visitation (Family Code sections 3171, 3176, 3185); 4) Domestic Violence (Family Code section 3170, 3181, 3182); 5) Paternity (Family Code section 3172, 7600 et seq.); 6) Child Support Enforcement (Welfare and Institutions Code, section 11350 et seq.); 7) Termination of Parental Rights (Family Code section 7660.) and 8) Guardianships (Probate Code sections 1500 et seq.).

B. MANDATORY MEDIATION

Family Code sections 3170 and 3175 require that when it appears on the face of a petition or application or other pleading for an order or modification of an order that custody, temporary custody, or visitation rights are contested, the matter must be set for mediation of the contested issues prior to or concurrent with the setting of the matter for hearing. The purpose of mediation is the reduction of acrimony which may exist between the parties, the development of an agreement assuring the child's close and continuing contact with both parents, and to effect a settlement of the issue of visitation rights of all parties that is in the best interests of the minor (Family Code section 3161).

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C. COST OF MEDIATION

There is no direct cost to either party for the use of the Family Court Services' Mediation Program. The program is paid for by a portion of the filing fee for dissolution actions and a portion of the cost of a marriage license. The parties are free to retain a mediator of their own choice who is not employed by the Court and encouraged to attempt to resolve the dispute without court intervention. Mediation services provided by the Court are limited and should be used only when there is an actual dispute that cannot be resolved by the parties themselves or with the assistance of their lawyers. The Court assumes no responsibility for payment for services to an independent mediator or family counselor unless their services are provided through the Court.

The Court may contract with mediators who are private practitioners to conduct mediation. The mediation services provided by the Court are limited in scope. The service is in the nature of custody and visitation problem solving rather than therapy or counseling. The service does not provide, nor should attorneys or litigants expect, long-term or on-going counseling regarding child custody, visitation or parenting skills.

D. TYPES OF MEDIATION

There are three types of mediation services available, First Tier Mediation (Agreement), Second Tier Mediation (Recommendation) and Separate Mediation (Recommendation). The following sections set forth general rules regarding mediation services. There are special rules that apply to Second Tier Mediation and Separate Mediation which are set forth in sections under titles referring to these services.

If there has been a history of domestic violence between the parties or where a Domestic Violence Restraining Order has been issued, mediation shall be scheduled in separate sessions at separate times if, ordered by the court, requested by the protected party or party who has made an allegation of domestic violence under penalty of perjury. See the section on Separate Mediation.

E. GENERAL RULES

1. Referral of Cases to Mediation. Mediation services are only available where there is a case filed with the Court. If there is no pending action (dissolution, paternity, visitation, guardianship, etc.), no mediation will be scheduled.

The parties must attend the Co-Parenting Program prior to attending mediation. Specific rules and exceptions are set forth in the section on Co-Parenting herein. A custody or visitation dispute will be mediated only if the parties have been unsuccessful in resolving the dispute by other means. Parties should first contact each other and attempt to resolve any dispute between themselves. If they do not succeed, they should then seek the aid of their attorneys in resolving the dispute. If the dispute is still unresolved after

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conferring with each other and through counsel, mediation may be requested. When requesting an appointment, the parties will be asked what efforts have been made to resolve the dispute prior to requesting mediation. In any case in which custody, temporary custody, or visitation is contested, the matter must be referred for mediation prior to any scheduled hearing. There will be no final judicial determination of any contested custody or visitation issue until mediation has been completed.

2. How to Refer a Case to Mediation. Mediation referrals are made by contacting the Family Court Services office either by phone or in person, at the following location:

Clerk of the Court
Family Court Services Office
1200 Aguajito Rd.
Monterey, CA 93940
(831) 647-5851 (Monterey) or (831) 775-5535 (Salinas)

If both parties are represented by attorneys, each attorney should call in with information for the referral. If only one party is represented by counsel and the mediation is voluntary, the unrepresented party must complete a Request for Mediation form. The represented party's attorney should provide the information for that party. If neither party is represented by counsel, each party must complete a Request for Mediation form and submit it to the Family Court Services.

In order to accept a referral and schedule mediation the following information must be provided:

1. the case number and the number of any related cases (such as domestic violence actions);
2. if there is a Domestic Violence Restraining Order in place or whether there is an allegation of domestic violence in the file under penalty of perjury;
3. the parties' names, their current addresses and daytime telephone numbers; and
4. the name of opposing counsel if there is one.
5. any information which would affect scheduling such as parties coming from out of town, or the need for an interpreter.
6. proof that the parties have attended the Co-Parenting Workshop or that prior attendance was waived.

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No appointment will be scheduled until this information is provided. If there are special circumstances involved in the case, such as the need for interpreters, special travel or work schedules, etc., that should be mentioned at the time of referral. The mediation service coordinator will then schedule the initial mediation appointment by contacting the parties directly. A letter setting the appointment will be sent to the parties together with a brochure describing the service.

Rescheduling of a mediation appointment is discouraged. However, if there is a compelling reason, an appointment may be rescheduled if the parties contact Family Court Services immediately upon receipt of the confirmation of appointment. If some problem arises, please contact the Family Court Services as early as possible.

If the parties wish to cancel a mediation appointment because the dispute has been settled or if both sides agree to cancel the mediation for good reason, at least five (5) court days' notice must be given to the Mediation Service to avoid the possibility of sanctions.

The mediators may review the Court's file in the case prior to mediation to familiarize themselves with existing or temporary orders regarding custody and visitation. If there are other written agreements relating to custody or visitation which are not in the Court file and which would assist the mediator, for example orders from another jurisdiction, copies should be delivered to the mediation service prior to the first session. It is usually not necessary to bring any materials to the first appointment.

Mediation usually requires one or two sessions with the mediator with each session lasting approximately two hours. Second Tier and Separate Mediation usually require two and a half to three hours. Because of the mediators' case loads, and the need for completing mediation without unnecessary delay, parties and their attorneys must cooperate with the coordinator in the scheduling of appointments. If additional mediation sessions are needed, they will be scheduled before the parties leave a completed session. Failure to attend any scheduled mediation sessions without good cause may result in sanctions under California Rules of Court, Rule 227. The typical amount of sanctions for appointments missed without good cause is between \$150 and \$200, payable to the Court for reimbursement of costs.

3. Mediation Where OSC or Motion Pending. If mediation and Co-Parenting Program have not been completed nor an agreement been reached prior to the date set for hearing or trial of the issue, the Court will refer the case for Co-Parenting Program and/or mediation at the hearing. The Court may make temporary custody or visitation orders, or continue existing ones, pending completion of mediation. All temporary orders pending mediation are without prejudice and should not be cited as a basis for permanent orders. In order to avoid the time and expense of appearing for a court hearing when mediation has not been completed, it is strongly recommended that the attorneys refer the case to mediation as

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soon as it appears that custody, temporary custody, or visitation is contested and that hearing dates be selected sufficiently far off in time to allow completion of mediation. Before arranging mediation the parties or their attorneys should have discussed custody and visitation issues, or made reasonable attempts to do so, and concluded that the issues cannot be resolved by the parties themselves. Generally, the earlier the dispute is referred to mediation, the more likely it is that the matter will be resolved without the necessity of a judicial determination.

If mediation has not been ordered by the court, a Request for Mediation form describing the nature of the dispute must be submitted by both parties at the time mediation is requested. Counsel will be allowed to phone in the request for mediation and provide the information required on the form on behalf of their clients.

In emergency situations, the Court may ask the mediator to see the parties at the time of hearing (or within 48 hours if orders are requested ex parte) to negotiate temporary orders until further mediation can be scheduled to resolve any dispute related to permanent custody and visitation orders. The fact that one party is from out of town does not necessarily create an emergency situation. Resources for immediate mediation are limited. Attorneys and parties are urged to arrange for mediation sufficiently in advance of the hearing to allow it to be completed prior to the date of the hearing.

The office of Family Court Services can usually accommodate parties who are coming from out of town or state if given sufficient advance notice. If a case requires mediation and one of the parties resides out of town or state, the mediation can be scheduled within the week preceding or following the hearing so that disputed issues may be resolved without requiring the out-of-town or out-of-state parent to make additional trips to Monterey County. Do not expect a mediation appointment on the day of the hearing without prior contact with the Family Court Services. Mediation by phone may be requested in exceptional circumstances and will be scheduled only upon Court order.

4. Ex-Parte Requests for Mediation. All ex parte requests for mediation orders shall be accompanied by a declaration establishing good cause for the ex parte request. It should detail the existence of a custody or visitation dispute and what efforts, if any, have been made to reach an agreement and state specific reasons why an order for mediation is sought prior to service and without notice. The request should state that the applicant has attended the Co-Parenting Program. If granted the order shall read:

"Within 2 court days after receipt of these papers both parties shall contact the Family Court Services office at (831) 647-5851 or (831) 775-5535, complete the Co-Parenting Program, then mediation, prior to the hearing date."

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Specific appointment dates will not be given ex parte. There is no certainty that the Respondent will be timely served or that the date will be convenient for him or her. The applicant without counsel must deliver a completed Request for Mediation form to the Family Court Services office. An attorney should contact Family Court Services as soon as service has been made to start the scheduling process. All reasonable efforts will be made to assign dates convenient to the parties. However, because of the urgency and time constraints, parties must accept the date assigned by Family Court Services.

An order requiring prompt mediation may be required as a condition of the granting of any ex parte order for temporary custody.

5. Mediation with No Court Hearing. It is not necessary that an Order to Show Cause or a Notice of Motion for custody or visitation be set for hearing in order to refer a case to mediation. If no OSC or motion is scheduled, there must be an actual dispute, the parties must have attempted to resolve the dispute themselves, and there must be an express agreement of both parties to enter into mediation. Even though no hearing is pending, there must be a petition or complaint filed with the court. The number of mediation sessions may be limited by the Court. This section does not apply to Second Tier Mediation which is only available by court order.
6. Resolution of Other Issues pending Mediation of Child Custody and Visitation Disputes. If mediation of the contested child custody and visitation issues is not completed prior to the date set for the hearing, the Court may continue the hearing on those issues for a period of two to three weeks in order to allow sufficient time for mediation to be completed. If both parties are actively participating in mediation, then further continuances may be granted at the request of the parties or their attorneys. The Court may make orders on other issues, such as spousal support and child support, pending the completion of mediation. Orders for temporary child support will generally be based upon the custody and visitation arrangement at the time of the hearing. Such orders will be made without prejudice to the rights of either party with respect to the issues of custody and visitation.
7. Non-Dissolution Proceedings. If the custody or visitation dispute arises in the context of a paternity, guardianship, or non-parent action for custody or visitation rights, there are additional conditions which must be met before mediation will be scheduled. A right to custody or visitation must have been previously established by judicial determination. If it has not been established, the claimant has no legal custody or visitation rights which can be clarified through mediation. In these cases the parties must first obtain a temporary order of custody or visitation.

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Child custody and visitation mediation services will be provided in District Attorney actions when both parents are parties to the action. The party seeking to obtain custody or visitation rights may file a separate civil or domestic action for custody or visitation concurrently with the District Attorney support action.

8. Participating in the Mediation Proceeding. In First and Second Tier Mediation, the mediator will see both parties together. Thereafter, depending on the nature of the issues to be resolved, the mediator may see each party separately during mediation. Generally the parties are seen together. Whether the parties are seen separately, initially or later in mediation, is entirely at the discretion of the mediator. If there is a history of domestic violence or a protective order in place the terms of the section on Separate Mediation are determinative.

Stepparents may be included in the initial mediation session only with the prior consent of the mediator and both natural parents. If there is no prior consent to include stepparents, the decision to include stepparents at the first meeting will be made by the mediator alone. As a general rule, if the conflict between the natural parents involves a stepparent, their involvement in mediation will be encouraged.

The mediator has a duty to assess the needs and interest of the children involved in the custody and visitation dispute. The mediator may interview the children if, in the mediator's discretion, such an interview is necessary or appropriate. The decision to interview the child will generally be made by the mediator at the first meeting of the parties. The parties should not bring the child to any meetings with the mediator unless specific arrangements have been made with the mediator in advance of the meeting.

Under the provisions of Family Code section 3182, the mediator has the authority to exclude attorneys from participation in the mediation proceeding if, in the judgment of the mediator, the exclusion of the attorneys is necessary to facilitate the completion of mediation. Generally, attorneys will be excluded from the mediation proceedings. In addition, it has been the experience of the mediators that once mediation has been initiated, it occasionally may be helpful for the attorneys to confer with the mediator for the purpose of offering suggestions for the resolution of any disputed issues that may be preventing an agreement between the parties.

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Under Family Code section 6303 a support person may attend mediation with the protected party. A mediator may exclude a support person from a mediation session if the support person participates in the session, acts as an advocate, or the presence of the support person disrupts the process of mediation. The presence of a support person does not waive confidentiality of the mediation and the support person is bound by the confidentiality of mediation.

Attorneys should not wait at the Family Court Services during a session. Experience has shown this practice to be counter-productive to the purpose of mediation.

Some attorneys have advised their clients not to sign any agreement the attorney has not reviewed. Often the client does not reveal this until the mediation has resulted in an agreement which the client refuses to sign. This can be very destructive to the efforts of the mediator and the trust that has been developed between the parties which is reflected in the agreement. A rescission mechanism, described below, has been set up to allow objections to an agreement reached in mediation. Because this mechanism is available, attorneys are discouraged from advising a client not to sign any agreement.

If no agreement is reached as a result of mediation, a status form will immediately be filed with the Court and mailed to the attorneys, if any.

9. Non-English Speaking Participants. In the event one or both of the parties is not fluent in English, the Family Court Services will attempt to provide a mediator to conduct the services in the spoken languages of both participants. In instances where at least one of the parties does not speak English, the mediation shall be conducted by a bilingual mediator or by a mediator with the assistance of an interpreter(s) so that the discussion during mediation is satisfactorily understood by both parties. Family Court Services will make every effort to prepare the written agreement in both languages.

If an interpreter is required, the cost of the interpreter shall be paid by the parties in advance. Family Court Services will schedule the interpreter. Sufficient advance notice must be provided to allow time to locate an interpreter.

10. Request for Change of Mediator or Problems. In the event there is a request by a participant in mediation for a change of mediator or a concern regarding a problem relating to the mediation process, the participant shall complete a form provided by the Family Court Services office. The form shall be reviewed and acted upon by the Family Court Services office.

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11. Status Report. If the dispute between the parties is not resolved in mediation, the mediator will report to the Court that no agreement has been reached. The mediator may recommend to the Court that an investigation be ordered or psychological evaluation be obtained, note that a report to county child protective service has been made or recommend appointment of counsel for the child(ren). Further, the mediator may recommend that restraining orders be issued to protect the well being of the child(ren). The mediator will not advise the Court of the reasons why mediation was not successful unless the reason is that one or both of the parties a) would not cooperate in the process, b) did not come to the appointments or c) there is an allegation of abuse which was reported. Since the nature of the communications between the mediator and the Court is limited, both the parties and their attorneys should view the mediator as a problem solver, rather than as an adversary, advocate, or trier of fact. Copies of any status reports filed with the Court will be sent to the attorneys of record, if any.
12. Recommendation for Appointment of Counsel for Child. The mediator or custody investigator may RECOMMEND that counsel be appointed to represent any minor child(ren) when it appears that the best interests of the minor child requires independent counsel (Family Code section 3184). The reason for the recommendation of the mediator or the child custody investigator shall be stated in general terms and shall not be binding on the court. It shall ONLY be considered in so far as it alerts the court to the NEED TO CONSIDER the appointment of counsel. It shall not be considered as evidence indicating the need to appoint counsel. The confidential mediator shall not be called as witness and/or questioned as to the specific factual or evidentiary basis for the recommendation.
13. Extended or Ongoing Family Counseling. In certain cases, the mediator may recommend to the parties extended or ongoing family counseling. If the parties agree, provision for such counseling may be incorporated into the mediation agreement when the child is in need of such counseling, or the parties need extended or ongoing counseling in order to resolve the conflicts in their relationship which give rise to their disputes concerning child custody and visitation. The attorneys will be advised by the mediator if a recommendation has been made for extended or ongoing counseling and it is expected that the attorney will encourage the parties to follow the mediator's recommendation. The counseling services will not be provided by the Family Court Services or at court expense. The mediator may recommend one or more persons or agencies which the parties might contact to obtain counseling.

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14. Child Abuse. Penal Code section 11166 requires that the mediator immediately report all instances of suspected child abuse and/or neglect to a child protective agency. The parties will be advised at the beginning of the first mediation session of the reporting responsibility.

F. SPECIAL RULES

1. FIRST TIER MEDIATION (AGREEMENT)

A. MEDIATION PROCEDURE

At the first meeting the mediator will explain the mediation process and will clarify for the parties the mediator's role as a neutral party whose primary concern is the satisfactory resolution of the dispute between the parties concerning custody and visitation in a manner which is in the best interests of the child(ren). The mediator is a problem solver and an advocate for the best interests of the child not an adversary or trier of fact. The mediator will explain that no recommendations will be made to the Court concerning the resolution of the dispute between the parties if mediation is unsuccessful. In addition, the mediator will explain to the parties that all communications between the parties and the mediator are confidential except 1) information (which legally must be reported) that someone in the dispute is a danger to self or others or 2) information incorporated into a written agreement between the parties. By working with the parties and their attorneys, the mediator will attempt to generate practical alternatives for resolving the child custody and visitation dispute. It has been the experience of the mediators that once the initial anger, frustration and anxieties of the parties have been discussed, the parties are better able to focus their attention on the needs of their children, and disputes can often be resolved in a way which is in the best interest of the child.

It is the judgment of the Court that the confidentiality of these mediation proceedings is necessary in order to facilitate communications between the parties and the mediator without fear that such communications will be used in subsequent judicial proceedings. Mediator's files are considered confidential and not available to the parties or their attorneys by subpoena or otherwise. The mediator may not be called as a witness in a subsequent hearing nor may the mediation service records be subpoenaed.

B. THE MEDIATION AGREEMENT

i. GENERAL

If the parties reach an agreement as a result of mediation, the agreement will be handwritten by the mediator immediately. The parties will be asked to review and sign the handwritten version of the agreement. Each party will receive a copy of the signed handwritten agreement before leaving. A copy of the signed handwritten agreement will be mailed to the attorneys of record within two work days of the execution of the agreement.

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If an agreement is reached, a ten (10) day rescission period is given to permit parties an opportunity to consult with their attorneys regarding the agreement. If, during the 10 calendar days following the mediation agreement date, either party wishes to rescind the agreement, they must contact Family Court Services at the phone number given above. Written notice of rescission should be given to Family Court Services at the above address as well as to opposing counsel.

If either party objects to the agreement, three alternatives are available:

1. The attorney (or party if unrepresented) may talk with the mediator directly about the objection. If the objection arises from a misunderstanding of the terms of the agreement, this may result in a reaffirmation or modification of agreement;
2. An appointment for additional mediation to re-negotiate the objectionable part(s) of the agreement may be scheduled;
3. The mediation is reported to the Court as one in which no agreement has been reached and the parties are free to pursue whatever legal remedies are available to them. Any agreement which has been rescinded may not be presented to the Court at any subsequent hearing.

If a notice of rescission is not received within 10 calendar days of the date of the agreement, the agreement will be typed and submitted to a judge for signature, at which point the agreement becomes a court order. Typed, signed and file stamped copies of the agreement will then be mailed to unrepresented parties and counsel.

The agreement can be filed and made a court order before the expiration of the ten day period either a) by written stipulation of all parties, or b) by oral stipulation in open court on the record (for example, at a previously scheduled court hearing).

The agreement will contain a clause to the effect that it does not create, modify or extinguish any obligation of support. If either party believes that the custody/visitation agreement necessitates a modification of support, a separate order must be sought.

The agreement shall also contain a clause in which the parties acknowledge that if a criminal protective order is in place or obtained in the future requiring NO CONTACT, such order will supersede the terms of the Parenting Agreement. A modification of the criminal protective order will have to be obtained in order to allow contact.

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ii. TEMPORARY AGREEMENTS

If an agreement is reached which covers only a limited period of time, applies pending further court action or is to be used on a trial basis only, the following procedures will be implemented. There will be no ten (10) day rescission period (see iv. below). The agreement will not automatically become a court order.

1. The agreement will be kept on file in the Family Court Services office and will not be submitted to the Court, even after 10 days, by the Family Court Service.
2. A status form will be filed with the Court (copy mailed to each unrepresented party and counsel stating that the parties have reached a temporary agreement, are still engaged in mediation, and will be returning to mediation on a date specified (generally within six months) to negotiate an ongoing agreement.
3. Family Court Services will schedule a return appointment for the parties, generally within six months, and will confirm the appointment with the parties two weeks prior to the date they are to return.
4. If the agreement breaks down prior to the date the parties are scheduled to return, an appointment will be scheduled for the parties as soon as possible at their request if they are unable to resolve the dispute themselves or through the aid of their attorney(s).
5. If one of the parties fails to attend further mediation regarding a temporary agreement or declines to participate in further mediation, the temporary agreement will expire on the date set forth in the agreement.

iii. PARTIAL AGREEMENTS

In the event some of the disputed issues are resolved and some are left unresolved, the mediator will prepare an agreement covering the resolved issues. A status form apprising the Court of the unresolved custody or visitation issues which must be decided by the Court will also be filed. The 10 day rescission process described above applies to partial agreements as well.

2. SECOND TIER MEDIATION (RECOMMENDATION)

If the Court believes that there is good cause, it may direct the mediator, to render a custody or visitation recommendation consistent with Family Code section 3183. Second Tier Mediation may be scheduled only upon court order.

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3. SEPARATE MEDIATION (RECOMMENDATION)

In any case in which a Domestic Violence Order (CLETS) has been issued or a Criminal Protective Order is in place against one of the parties, the mediation shall be set and conducted as Second Tier Mediation. It shall be set and conducted as Separate mediation if so ordered by the Court or requested by the protected party.

In cases where there has been a history of domestic violence but no order has been issued, the mediation shall be conducted as Separate Mediation when requested by the party who has alleged under penalty of perjury that the violence has occurred.

The time and date of Separate Mediation sessions are confidential and are not disclosed to the other party. A letter shall be sent out individually to each party confirming the time scheduled for mediation and the parties are cautioned not to inform the other party of the time and date set.

The mediator shall be directed to render a written recommendation to the court regarding visitation and custody issues taking into consideration the parameters set by any restraining orders. The protected party may have a support person present with the protected party during the mediation session. Until the Court adopts the recommendation, the parties must follow any interim order regarding custody and visitation. (Adopted effective October 1, 1998; Amended effective July 1, 1999; Amended effective July 1, 2000; Amended eff. July 1, 2003)

10.07 COURT ORDERED CUSTODY INVESTIGATION, EVALUATION, AND ASSESSMENT

The terms of this rule apply to court-ordered investigations, evaluations or assessments.

A court-ordered investigation refers to an investigation into the facts involved in determining the issue of custody or visitation.

An evaluation refers to a psychological evaluation prepared by a psychologist or psychiatrist.

An assessment refers to a counseling assessment prepared by a Child and Family Counselor.

A. APPOINTMENT OF EVALUATOR

In any case in which custody and/or visitation are in dispute, the court may appoint an investigator, evaluator or counselor and order that a child custody/visitation investigation, evaluation or assessment be conducted if, in the opinion of the court, or upon the recommendation of a mediator, there is a need for such service.

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The term "evaluator" refers generally to an investigator, evaluator or counselor appointed as set forth herein. An "evaluation" refers to an investigation, evaluation or assessment unless stated otherwise.

The Court may appoint:

- the Court's contract Family Court Services Investigator;
- a mental health professional who possesses at least the statutory minimum requirements for family court mediators; or
- an investigator to whom the parties stipulate in writing, subject to approval by the Court.

If none of the persons described above is reasonably available, the court may appoint a person the court has determined possesses the necessary qualifications. Whenever possible and appropriate, multiple examinations of the child by different examiners shall be avoided.

Before a person who is NOT a court contractor is appointed as a court-appointed evaluator, the person shall, upon request, provide to the attorneys for the parties, or to the parties if they are unrepresented, the following information:

- a curriculum vita; and
- the names of at least three attorneys who have worked with the proposed court-appointed investigator in connection with previous investigations or three mental health professionals who are familiar with the work of the proposed court-appointed investigator.

B. CHALLENGES TO COURT-APPOINTED EVALUATOR

No peremptory challenge of a court-appointed evaluator shall be allowed whether that person is the court-contracted Family Services Investigator, any other county or court employee or a mental health professional.

C. WITHDRAWAL BY COURT-APPOINTED EVALUATOR

A court-appointed evaluator may seek to withdraw from a case. Such request shall be made as soon as possible after the evaluator is aware of the conflict or other reason that should cause the evaluator to seek to withdraw in order not to unduly delay the resolution of the issues before the court.

D. EX PARTE CONTACT PROHIBITED

No party or attorney for a party shall initiate contact with a court-appointed evaluator orally or in writing, to discuss the merits of the case without giving the other party notice and an opportunity to be present or to receive a copy of a written communication. Nothing in this rule shall prohibit the court-appointed evaluator from contacting either party or attorney.

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E. CONTACT BETWEEN COURT-APPOINTED EVALUATOR AND MINOR CHILDREN

The Court relies on the judgment of the evaluator and other persons appointed, as a part of the investigation, in making decisions as to whether children will be interviewed, under what circumstances children will be interviewed, and in justifying such decisions in a particular case. Except in extraordinary circumstances, including the potential for danger to the child, children will be informed that the information provided by the child will not be confidential. During the initial meeting, if any, the evaluator shall provide the child with an age-appropriate explanation of the evaluation process. A child seen by the evaluator with one parent will also be seen with the other parent. At the discretion of the evaluator, interviews with siblings may be separate. Unless ordered by the court, an evaluation shall not be based on an interview with only one parent.

F. COURT REPORT

The court order appointing the evaluator shall state the purpose and scope of the evaluation and the date the report shall be filed with the court. Generally, the court will order the report filed within 60 calendar days from the date of appointment. The date for return of the report may be extended by order of the court or written agreement of the parties. The report shall be in writing and shall be distributed to the court, all counsel, and to the parties if they are unrepresented ten (10) calendar days prior to hearing. All written reports and recommendations of the court-appointed evaluator shall be conducted in accordance with and served upon the parties or attorneys consistent with the provisions of Family Code section 3111 and California Rules of Court 1257.3.

G. ACCESS TO THE REPORT

Any written report or recommendation from the court-appointed evaluator or the person appointed by the court to render a report as a part of the investigation shall be confidential and unavailable to any person except the court, the parties, their attorneys and any person to whom the court expressly grants access by written order made with prior notice to all parties. No person who has access to a report shall make copies of the report or disclose the contents of the report to any child.

H. GRIEVANCE PROCEDURE

Grievances raised in connection with court-ordered evaluations shall be made in writing, signed, under penalty of perjury, by the party filing the grievance, and addressed to the Presiding Judge. The penalty of perjury statement shall be made in the following format:

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Date: _____ Signature of Grievant: _____

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The grievance must specify the issue which is being alleged as the basis for the grievance. The remedy requested must also be specified. Upon receipt of the grievance, the Presiding Judge shall initiate an internal court investigation. The court will determine whether there are witnesses, ascertain the facts of the allegation, notify the investigator of the grievance, and solicit a response to the allegation in the grievance from the investigator. The investigation shall be completed within 30 calendar days of the date the court received the written grievance. The court shall notify the grievant and the grievant's attorney as to whether the grievance is sustained, not sustained or unfounded. The grievance and findings by the court shall be maintained in the court's Family Court Services office, for a period of one year, from the date the Presiding Judge's findings are issued. At the end of the one year period, the grievance file shall be destroyed by the Family Court Services Director. The grievance file shall be maintained as a confidential record during and after the evaluation and shall not be made part of the court's case file. The file shall not be open to inspection by the attorneys or the parties, except upon court order.

I. DISTRIBUTION OF COURT RULES

The court shall advise each party of the local rules relating to court-appointed investigations in child custody and visitation disputes. These rules shall be made available to the public through the Local Rules of Court and through distribution of the court pamphlet "Child Custody and Visitation Investigations and Evaluations."

The court pamphlet shall be distributed by the court-appointed investigator to counsel and each unrepresented party when a court-ordered investigation is ordered. The pamphlet and all rules shall be attached to the Investigation and Evaluation Questionnaire distributed by the investigator. The attorneys and the parties shall sign the Questionnaire and acknowledge that they have received and read the pamphlet. The Questionnaire shall contain an admonition that the investigator will not proceed with the investigation and evaluation until the questionnaire is received by the investigator and the investigation fees are paid in full. Arrangements for fees for psychological evaluations or assessments are made directly with the evaluator.

J. PAYMENT OF EVALUATOR'S FEES AND COSTS

The parties shall be charged a fee of \$700.00 for a Child Custody/Visitation Investigation and Evaluation. Generally, each party is responsible for payment of one half (\$350.00) of the total fee. At the time of appointment of the evaluator, the court shall make an order allocating the payment of the evaluator's fees and costs between the parties, using as a guideline Family Code sections 271, 2030 and 2032. Payment shall be made directly to the Clerk of the Court. Unless otherwise ordered by the court, the evaluator shall not commence an investigation without proof of full payment of fees by the parties. (Adopted effective October 1, 1998; Amended effective July 1, 1999; Amended effective July 1, 2000; Amended effective January 1, 2001)

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10.08 MISCELLANEOUS RULES

A. DEFAULT OR UNCONTESTED HEARING

No uncontested or default matter shall be heard unless application is filed with the Clerk at least five (5) court days in advance thereof, unless an emergency exists which requires an earlier hearing. No matter shall be set unless all pleadings, stipulations, and other necessary papers are on file with the Clerk and default, if required, has been entered.

B. DUPLICATE FILING

Copies of previously filed pleadings, declarations or other documents should not be attached as exhibits to subsequent documents. Reference to the previous documents is sufficient. (Rule 10.08, B., Adopted effective July 1, 2000)

C. CONFIDENTIAL RECORDS

It is the responsibility of the filing party to identify any documents that may be considered confidential and to seal such documents when filed with the Court. Such documents may include tax returns, medical reports, psychological records, custody investigation reports, and police reports. HIV laboratory test results shall not be made public. This rule pertains to any documents that are attached to a pleading and filed with the Court. If such attachments are not submitted as sealed, the Clerk of the Court will not act to seal the documents. Unless sealed by the filing party, the documents will be considered as open and public, upon filing with the Clerk. Refer to Local Rule 10.08.G. Sealed Documents listed below, for instruction in filing confidential documents.

D. PLEADING FOR ADVERSE PARTY

The practice in domestic relations proceedings whereby the petitioner's attorney prepares pleading for the respondent is not favored. Unless good cause is shown (e.g., military service, party out of state, etc.), no uncontested civil matter shall be heard on answer or response, unless such instruments are prepared by the answering party or his counsel.

E. SANCTIONS

Failure to comply with the above rules and policies may result in an award of attorney fees, costs, or other sanctions pursuant to California Rules of Court, Rule 227 and Code of Civil Procedure section 575.2.

F. DISMISSAL OF FAMILY LAW CASE ON COURT'S OWN MOTION

Absent good cause, a family law case may be dismissed, without prejudice, on the Court's own noticed motion when:

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1. the case is dropped from the trial calendar because the parties have reconciled; and
2. no further action is taken in the case within 180 calendar days from the date the case is dropped from the trial calendar.

G. SEALED DOCUMENTS

Any confidential documents shall be submitted for filing in a sealed, clasp envelope not smaller than 7 inches by 10 inches nor larger than 8 ½ by 11 inches in size. The envelope shall be attached to the accompanying document clasp-side down to allow access for the court through the clasped end. A label shall be affixed to the envelope including the case name, number and identity of the documents enclosed.

(Adopted effective October 1, 1998; Amended effective July 1, 1999; Amended effective July 1, 2000; Amended effective July 1, 2001; Amended effective January 1, 2002)

H. COURT COMMUNICATION PROTOCOL FOR DOMESTIC VIOLENCE AND CHILD CUSTODY ORDERS

Court records shall be accessed as set forth in the following paragraph in order to determine if a Criminal Protective Order (CPO) exists involving the parties and affecting the custody or visitation of the children. Any Custody or Visitation Order (CVO) subsequently issued shall take into consideration the terms of any existing CPO and shall be drafted in a manner not inconsistent with the CPO. If the court issuing the CVO recommends that a modification of the CPO be considered, the parties shall be referred to the modification calendar of the Domestic Violence court.

The court records shall be accessed as follows:

A. Family Law, Probate and Juvenile: When there are allegations of domestic violence in the documents submitted to the court.

B. Civil Restraining Orders - Domestic Violence, Harassment, Elder Abuse and Workplace Violence: Prior to the issuance of a temporary restraining order and prior to the hearing on such order.

C. Mediation: Prior to every Separate Mediation and any time there are allegations of domestic violence in the file.

The Domestic Violence court shall make reasonable efforts to determine if a custody or visitation order exists involving the defendant. The court issuing the CPO may permit visitation pursuant to any Family Law, Probate or Juvenile Court order so long as such visitation is determined by the court to be consistent with the safety of the victim[s].

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When a CPO exists, any CVO that permits contact between the defendant and the children shall provide for the safe exchange of the children. The CVO shall also specify the time, day, place and manner of transfer of the child pursuant to FC3100 so as to limit the child's exposure to potential domestic conflict or violence and to ensure the safety of all family members. The safety of the parties and their children shall be the court's paramount concern.

This rule does not prevent a CVO from containing more restrictive terms than the CPO. (Adopted effective January 1, 2004, pursuant to CRC 5.500(c)).

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CHAPTER 11

**SPECIAL MASTER GUIDELINES
(CHILD CUSTODY AND VISITATION)**

11.01 ROLE OF SPECIAL MASTER

A Special Master is a mental health professional, mediator or family law attorney who specializes in helping parents resolve disputes about what is best for their children. The Special Master can make such decisions about children if the parents are unable to do so. The Special Master's ultimate role is not to prepare an investigation or evaluation nor to mediate, but to make decisions when the parents cannot, and to assess, report and make recommendations to the Court regarding the impact of those decisions on the best interests of the children. (Adopted effective October 1, 1998)

11.02 SELECTION AND APPOINTMENT OF SPECIAL MASTERS

a. Legal Authority for Appointment

Legal authority for appointment of a Special Master is found in the following Code sections:

1. appointment of Special Master as an expert witness under Evidence Code § 730;
2. appointment as an arbitrator under CCP § 1280; appointment as a mediator under Family Code § 3160-3186; or appointment as a referee under CCP § 638 *et seq.*

The appointment of a Special Master as a referee under CCP § 638 *et seq.*, provides the most flexibility and is closest to the intent of the Special Master role. It should be noted that if the appointment is by stipulation, the parties may agree that the Special Master be given the power to make binding decisions; if not, the role of the Special Master is advisory, with the court retaining authority over all decisions.

b. Qualifications

PSYCHOLOGISTS AND PSYCHIATRISTS:

1. Membership in national or state professional association.
2. Experience.
 - a. 3 years post-license experience in child and family therapy; and
 - b. 3 years experience in diagnostic evaluations for family court and/or CPS and/or family mediation service with a minimum of 10 evaluations; and
 - c. 3 years experience in court-based family mediation or assessment.

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3. Training.
 - a. Family systems, child development, psychology of divorce and custody. Mediation training is helpful.
4. Familiarity with ethical issues of custody disputes.
5. Working knowledge of custody law, with a minimum of six cases working with attorneys and/or court appearances.

MARRIAGE, FAMILY AND CHILD COUNSELORS AND LICENSED CLINICAL SOCIAL WORKERS:

Same as above, with 5 years experience, for 2a, 2b, and 2c.

ATTORNEYS:

1. Membership in state or national professional association.
2. Experience:
 - a. 10 out of the last 12 years experience practicing family law;
 - b. 20 custody cases, carried through judgment.
3. Training
 - a. Mediation training required;
 - b. Continuing education in custody law;
 - c. The equivalent of child development (6 units) and family systems (3 units).
- c. Timing

Generally, a Special Master should not be appointed until after a formal child custody evaluation has been completed, so that he or she may have the benefit of the results of that evaluation in working with the parties. On rare occasions, it may be appropriate to appoint a Special Master pending completion of an evaluation, to deal with matters requiring immediate attention.

d. Procedure

1. Appointment

The parties may stipulate to appointment of a Special Master, subject to consent of the individual selected, and subject to the Court's approval. (See Attachment II Receipt and Consent to Appointment of Special Master) The Special Master's role powers, duties, term and incidental matters should be set forth in a written stipulation. (See Attachment I Order Appointing Special Master)

If the Court appoints a Special Master without a stipulation (either sua sponte or at the request of a party), the parties shall be informed of the name, qualifications and fee of the person proposed, and the right to object to that person for good cause (lack of qualifications, conflict of interest, etc.). Each party should

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also have the right to one peremptory challenge in the case, similar to that set forth in CCP§ 170.6.

2. Acceptance of Appointment

The proposed Special Master should have the right to accept or decline any appointment, with or without giving a stated reason. A person proposed as a Special Master is required to decline appointment if he or she knows of any bias or conflict of interest which would prevent him or her from acting fairly and impartially.

The Special Master shall act pursuant to a written order defining his or her role, duties, and fees. The form of the order shall be signed and approved by the Special Master.

If the Special Master is appointed upon stipulation, the Special Master's written consent to appointment shall be included with the stipulated order before it is submitted to the court.

If the Special Master has been appointed without a stipulation, then counsel (or party acting *in pro per*) designated by the court shall send a file-stamped copy of the order to the Special Master, together with a receipt and consent for signature and filing with the court (See Attachment II, Receipt and Consent to Appointment of Special Master). In such a case, the moving party (or the court, if appointment is *sus sponte*) shall contact the prospective Special Master in advance to determine his or her availability.

e. Term of Appointment

The Special Master shall be appointed for a specified term or length of time, usually at least one year and not more than two. This will give the Special Master sufficient time to work with the family, while reinforcing the parents' responsibility for their own lives and their children's welfare.

f. Fees

A person appointed as a Special Master is entitled to charge a reasonable fee commensurate with his or her experience and abilities and to request an appropriate retainer (subject to replenishment as it becomes diminished). The order appointing the Special Master shall clearly specify the fee arrangement and each party's responsibility for the fee, as determined by the Court or by stipulation. The Special Master shall also have the ability to recommend a reallocation of fees as a sanction for obstructive behavior; this power shall also be spelled out in the order.

g. Withdrawal and Removal

Once appointed, the Special Master shall have the right to withdraw upon written notice of the Court and the parties, with or without stated reason.

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The Special Master may be disqualified on any of the grounds applicable to the removal of a judge, referee or arbitrator, upon noticed motion by either party or the court, sua sponte.

Neither party may initiate court proceedings for the removal of the Special Master or to bring to the attention of the court or any other body any grievances regarding the performance or actions of the Special Master without meeting and conferring with the Special Master in an effort to resolve the grievance. (Adopted effective October 1, 1998)

11.03 POWERS AND ISSUES OF THE SPECIAL MASTER

a. First Level

To make binding decisions, if the parties so stipulate, on matters relating to daily routines, management of services provided by third parties and minor alterations in the visitation schedule.

Subject to the stipulation of the parties, the Special Master has the authority to make decisions regarding the issues set forth below and such decisions are effective as orders when made. The decisions will continue in effect unless modified or set aside by a court of competent jurisdiction. Special Master decisions on these matters shall be communicated to parties and counsel in person, by telephone, mail, fax, and/or personal delivery, and will take effect immediately upon issuance. In the absence of a stipulation, the Special Master will make recommendations on these matters, as with the matters listed in the second level.

1. Dates and times of pick-up and delivery
2. Sharing of parent vacations and holidays
3. Method of pick-up and delivery
4. Transportation to and from visitation
5. Selection of child care/daycare and baby sitting
6. Bedtime
7. Diet
8. Clothing
9. Recreation
10. After school and enrichment activities
11. Discipline
12. Health care management
13. Alterations in schedule which do not substantially alter the basic time share agreement
14. Participation in visitation (significant others, relatives, etc.)
15. In the case of infants and toddlers, increasing time share when developmentally appropriate
16. Other daily routines
17. Participation in alcohol and drug monitoring or testing, including selection of monitors or testers

b. Second Level

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To make recommendations on issues having a longer-term impact on the children's best interests, short of changes in physical or legal custody or substantially limiting parents access to children.

The Special Master has the authority to make recommendations on the issues set forth below. The recommendations shall be submitted to the court, which may approve them and enter them as court orders (See Attachment III Order Adopting Special Master Recommendations).

1. Private school education and school placement
2. Scheduling of church attendance and religious classes
3. Large changes in vacation and holiday timeshares
4. Supervision of visitation
5. Timeshare changes not altering the child's primary residence
6. Appointment of counsel for children
7. Participation in adjunct health services including physical and psychological examinations, assessments and psychotherapy, including selection of providers

Special Master recommendation on these matters shall be served on the Court, parties and counsel by mail, fax or personal delivery. The Special Master recommendations shall be subject to adoption by the Court as an order unless either party files and serves a motion objecting to entry of the order within 15 calendar days of service of the recommendations. Either party shall have the right to request a written explanation from the Special Master of any recommendation, which shall be provided within 20 calendar days to both parties, counsel and the court.

c. Third Level

To recommend to the Court (without any recommendation as to the preferred outcome) that it consider and review matters substantially altering the parties' timesharing arrangements, altering physical custody or legal custody or substantially limiting a parent's access to his or her children, and matters related to religion and religious training.

The Special Master shall not make any recommendations which alter a child's primary residence, alter an award of physical custody, alter an award of legal custody, prohibit a party's contact with his/her children, or require or prohibit adherence to a religion. These decisions and others relating to issues not included among those assigned to the Special Master, as set forth in the first and second levels, are reserved to the Monterey County Superior Court for adjudication, and may be presented to the court by either party or upon the recommendation of the Special Master without a recommendation as to outcome. (Adopted effective October 1, 1998)

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11.04 PROCEDURE FOR IMPLEMENTING RECOMMENDATIONS

- a. Special Master's decisions on first-level matters shall be communicated to parties/counsel orally and/or in writing, in person, by telephone, fax and/or mail, and take effect immediately.
- b. Special Master recommendation on second-level matters shall be communicated in writing to the Court/parties and counsel by mail, fax or personal delivery. The Special Master recommendations would be subject to adoption by the Court as an order after 15 days (see Attachment III Proposed Order Adopting Special Master) unless either party files and serves a motion objecting to entry of the order. Either party should have the right to request a written explanation of any recommendation, to be provided within 20 calendar days, to the other party, counsel and the court.
- c. Special Master recommendation on third-level matters shall be communicated in writing to the Court/parties and counsel by mail or personal delivery. (Adopted effective October 1, 1998)

11.05 EX PARTE COMMUNICATIONS

- a. Communication with the Court.

The Special Master is authorized to communicate ex parte with the court, at the discretion of the Special Master and the judge. Ordinarily, such communication should be made only after giving notice to both parties. However, notice may be excused if notice would frustrate the very purpose of the communication, provided that the Special Master notifies the court that the communication is being made without giving notice and provides the reasons for not giving notice.

- b. Ex Parte Communications with Parties and Counsel

The Special Master and the parties, as well as their attorneys, shall be permitted to engage in free oral communication without advance notice to the opposing party or attorney. If the parties communicate in writing with the Special Master, copies should be provided to the other party. Similarly, written communications from counsel to the Special Master shall be copied to the other attorney. The Special Master shall have the right to impose reasonable limitation on these communications. (Adopted effective October 1, 1998)

11.06 SPECIAL MASTER ROLE WHEN ISSUES ADDRESSED INTERRELATE WITH FINANCIAL OR PROPERTY ISSUES

Occasionally, issues may arise which are outside of the expertise of the Special Master, particularly issues such as support, use or occupancy of property, management of assets and other financial issues. The Special Master may request appointment of a co-Special Master with the necessary expertise to assist the Special Master in finding a resolution which will be in the best interests of the

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children. The recommendations of the co-Special Master should ordinarily be considered second-level issues requiring approval of court to implement. (Adopted effective October 1, 1998)

11.07 IMMUNITY

Qualified people who serve as Special Master by appointment of the court shall be advised that they may be protected by quasi-judicial immunity, so long as they maintain neutrality and perform quasi-judicial functions. See Howard v. Drapkin 222 Cal.App.3rd [271 Cal.Rptr. 893]. (Adopted effective October 1, 1998)

11.08 FORMAT OF ORDER APPOINTING SPECIAL MASTER

The Court and Counsel should be free to fashion individual orders for unique situations. A proposed order for use and adaptation as appropriate is included in these guidelines (See Attachment I, Order Appointing Special Master). (Adopted effective October 1, 1998)

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ATTACHMENT I

ORDER APPOINTING SPECIAL MASTER

SUPERIOR COURT OF CALIFORNIA, COUNTY OF MONTEREY

Marriage of Petitioner:

Case No.

and

**ORDER APPOINTING
SPECIAL MASTER**

Respondent:

_____ /

Good cause appearing thereof, pursuant to the stipulation of the parties,

IT IS ORDERED, ADJUDGED AND DECREED THAT:

Appointment of Special Master.

1. _____ is appointed Special Master, to serve until his/her resignation or written agreement of the parties, further court order, or _____, whichever first occurs.

Powers of Special Master.

2. Level One. Subject to the stipulation of the parties (if indicated on Exhibit 1), the Special Master has the authority to make decisions regarding the issues set forth on Exhibit 1 and such decisions are effective as orders when made and will continue in effect unless modified or set aside by a court of competent jurisdiction. Special Master decision on these matters shall be communicated to parties/counsel in person, by telephone, mail, fax, and/or personal delivery and will take effect immediately.

If the parties do not stipulate to the Special Master's authority to make decisions about the matters listed on Exhibit 1, those matters shall be subject to the Special Master's authority to make recommendations in accordance with Paragraph 3 of this order.

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3. Level Two. The Special Master has the authority to make recommendations on the issues set forth on Exhibit 2, which recommendations shall be submitted to the court, which may approve them and enter them as court orders.

Special Master recommendation on these matters shall be served on the Court/parties and counsel by mail, fax or personal delivery. The Special Master recommendations shall be subject to adoption by the Court as an order unless either party files and serves a motion objecting to entry of the order within 15 days of service of the recommendations. Either party shall have the right to request a written explanation from the Special Master of any recommendation, which shall be provided within 20 calendar days to both parties, counsel and the court.

4. Level Three. The Special Master shall not make any recommendations which alter a child's primary residence, alter an award of physical custody, alter an award of legal custody, prohibits a party's contact with his/her children, or require or prohibit adherence to a religion. These decisions and other relating to issues not included among those assigned to the Special Master in Exhibits 1 and 2 of this order are reserved to the Monterey County Superior Court for adjudication, and may be presented to the court by either party or upon the recommendation of the Special Master without a recommendation as to outcome.

Communications with the Special Master.

5. Both parties shall cooperate with the Special Master and shall be present when so requested by the Special Master. The Special Master may initiate contacts with the parties or counsel which are informal in nature, by telephone or in person. The Special Master has the authority to decide when and if to meet with the parties and to determine the protocol of all meetings including the power to determine who attends such meetings.

6. The parties and their attorneys may communicate ex parte with the Special Master, subject to reasonable limitations imposed by the Special Master. Any party may write to the Special Master, provided that copies are provided to the opposing party simultaneously and subject to reasonable limitations imposed by the Special Master. Counsel may initiate contact in writing with the Special Master, provided copies are provided to opposing counsel simultaneously.

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7. The Special Master may communicate ex parte with the judge, at the discretion of the Special Master and the judge. Such communications shall be made only after giving notice to both parties; provided, however, that notice may be excused if notice would frustrate the very purpose of the communication. If the Special Master communicates with the judge without having given notice, (s)he shall notify the judge of that fact and his/her reasons for not giving notice.

8. Counsel or parties in pro per shall serve the Special Master with all pleadings and discovery relating to non-financial issues concerning the child(ren).

9. With the agreement of the parties and counsel, or upon court order, the Special Master may utilize consultants and/or assistants as necessary to assist the Special Master in the performance of the duties contained herein.

10. The Special Master may request the appointment of a co-Special Master where issues arise which require the expertise of someone other than the Special Master. The powers of the co-Special Master shall be set forth in the order appointing the co-Special Master.

11. The parties shall sign all requested releases, including the release attached to this Order as Exhibit 3 and shall forthwith provide all relevant and reasonable records, documentation, and information requested by the Special Master.

12. No physician-patient or therapist-patient relationship and/or privilege between either party, the minor child(ren) and the Special Master is created by this order.

Fees.

13. The Special Master's fees is \$_____ per hour. Time spent in interviewing, report preparation, review of records and correspondence, telephone conversation, travel, court preparation and any other time spent in connection with serving as Special Master will be billed at the same hourly rate. The Special Master's fee for Court appearances is \$_____, per hour, including travel time to and from his/her office and waiting time. The Special Master may require an advance deposit in an amount to be agreed upon by him/her and the parties, subject to replenishment upon becoming diminished.

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14. The Special Master shall be reimbursed for any reasonable expenses he/she incurs in association with his/her role as Special Master. These costs may include, but are not limited to the following: photocopies, messenger service, long distance telephone charges, postage, express and/or certified mail costs and excess postage to foreign countries, parking, tolls, mileage, other travel expenses and word processing. At the Special Master's discretion, fees for consultants or assistants agreed to ordered shall be paid directly to the provider or reimbursed to the Special Master.

Allocations.

15. Except as otherwise provided below, the fees of the Special Master shall be shared by the parties in the following manner: Father shall pay _____% of the Special Master's fees, expenses and advance deposit, and Mother shall pay _____% of the Special Master's fees, expenses and advance deposit.

16. The Special Master shall have the right to allocate payment of his/her fees at a percentage difference from the above if he/she believes the need for his/her services is attributable to conduct and/or intransigence of one party.

17. In the event that either party fails to provide twenty four (24) hours' notice of cancellation of any appointment with the Special Master, such party shall pay all of the Special Master's charges for such missed appointment at the full hourly rate, at the discretion of the Special Master.

18. Once appointed, the Special Master shall have the right to withdraw upon written notice to the Court and parties, with or without a stated reason.

19. The Special Master may be disqualified on any of the grounds applicable to the removal of a judge, referee or arbitrator, upon motion by either party or by the court on its own motion.

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20. Neither party may initiate court proceedings for the removal of the Special Master or to bring to the attention of the court or any other body any grievances regarding the performance or actions of the Special Master without meeting and conferring with the Special Master in an effort to resolve the grievance.

Mother

Father

APPROVED AS TO FORM:

Attorney for Mother

Attorney for Father

Special Master

ORDER

IT IS SO ORDERED.

Dated: _____

Judge of the Superior Court

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EXHIBIT 1 Level One Powers

1. Dates and times of pick-up and delivery
2. Sharing of parent vacations and holidays
3. Method of pick-up and delivery
4. Transportation to and from visitation
5. Selection of child care/daycare and baby sitting
6. Bedtime
7. Diet
8. Clothing
9. Recreation
10. After school and enrichment activities
11. Discipline
12. Health care management
13. Alterations in schedule which do not substantially alter the basic time share agreement
14. Participation in visitation (significant others, relatives, etc.)
15. In the case of infants and toddlers, increasing time share when developmentally appropriate
16. Other daily routines
17. Participation in alcohol and drug monitoring or testing, including selection of monitors or testers
18. Other: _____

We agree that the Special Master may make binding decisions on the above matters.

Initials

Initials

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EXHIBIT 2 Level 2 Powers

1. Private school education and school placement
2. Scheduling of church attendance and religious classes
3. Large changes in vacation and holiday timeshares
4. Supervision of visitation
5. Timeshare changes not altering the child's primary residence
6. Appointment of counsel for children
7. Participation in adjunct health services including physical and psychological examinations, assessments and psychotherapy, including selection of providers.

EXHIBIT 3

INFORMATION RELEASE

We, the undersigned, specifically authorize any public agency, private person, physician, psychologist, treating therapist, drug and/or alcohol treatment program, hospital, law enforcement agency, teacher, counselor or child care provider possessing information about each of us or our minor children, confidential or otherwise, to release this information, including copies of all relevant documents, to _____, Special Master. We consent that interviews may take place at the children's schools if deemed appropriate by the Special Master. We understand this information will be used as the Special Master may deem fit and proper. This release shall remain valid until _____, (date). We understand that we are entitled to a copy of this release of information form.

FATHER:

MOTHER:

Signature & Date

Signature & Date

Print Name

Print Name

Date of Birth

Date of Birth

Social Security Number

Social Security Number

NAME OF CHILD/CHILDREN:

_____ Date of Birth: _____

_____ Date of Birth: _____

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ATTACHMENT II

RECEIPT AND CONSENT TO APPOINTMENT OF SPECIAL MASTER

SUPERIOR COURT OF CALIFORNIA, COUNTY OF MONTEREY

Marriage of Petitioner:

Case No.

**RECEIPT AND CONSENT TO
APPOINTMENT AND SPECIAL
MASTER**

Respondent:

_____ /

I, _____, hereby acknowledge receipt of a
file-stamped copy of the order Appointing Special Master filed _____,
and I consent to appointment as Special Master thereunder.

Dated: _____

Signature

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ATTACHMENT III

ORDER ADOPTING SPECIAL MASTER RECOMMENDATIONS

SUPERIOR COURT OF CALIFORNIA

Marriage of Petitioner:

Case No.

and

**ORDER ADOPTING SPECIAL
MASTER RECOMMENDATIONS**

Respondent:

_____ /

The court has read and considered the letter and recommendations submitted by Special Master _____, dated _____.

There being no objection filed, IT IS HEREBY ORDERED, that the court adopts and incorporated herein said recommendations (see attached copy of letter).

Dated: _____

Judge of the Superior Court

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CHAPTER 12

**SETTING OF CONTESTED FAMILY LAW, PROBATE, ADOPTION
AND UNLAWFUL DETAINER ACTIONS**

**12.01 CONTESTED FAMILY LAW, PROBATE, ADOPTION, AND UNLAWFUL
DETAINER ACTIONS**

Contested Family Law, Probate, Adoption, and Unlawful Detainer Actions will be set for trial only upon the filing of an At-Issue Memorandum. (Adopted effective October 1, 1998)

12.02 AT-ISSUE MEMORANDUM

The setting of cases for trial shall be in accordance with Rules 209, 216 and 221 of the California Rules of Court and these rules.

- a) Any At-Issue Memorandum filed shall be on the form provided by the Clerk of the court.
- b) Approximately fifteen (15) days after the filing of an At-Issue Memorandum the Court shall set the case for trial without a trial setting conference. Unlawful detainer matters shall be set six (6) days after the filing of an At-Issue Memorandum. (Adopted effective October 1, 1998)

12.03 COUNTER AT-ISSUE MEMORANDUM

- a) Any party not in agreement with any other representation made in an At-Issue Memorandum shall within ten (10) days after the service thereof, serve and file a Counter At-Issue Memorandum on his or her behalf. (Adopted effective October 1, 1998)

12.04 SHORT CAUSE

In short cause cases (one day or less), in addition to the information required by Rules 209 and 221 of the California Rules of Court, the At-Issue Memorandum shall indicate those dates, not less than thirty (30) days nor more than ninety (90) days from the date the At-Issue Memorandum is filed, during which trial counsel is not available for trial. (Adopted effective October 1, 1998)

12.05 LONG CAUSE

In long cause cases (more than one day), in addition to the information required by Rules 209 and 221 of the California Rules of Court the At-Issue Memorandum shall indicate those dates, not less than three (3) months nor more than six (6) months from the date the At-Issue Memorandum is filed, during which the trial counsel is not available for trial. (Adopted effective October 1, 1998)

12.06 SETTLEMENT CONFERENCES Rule 12.06.Repealed effective July 1, 2003.

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CHAPTER 13

RESET AND CONTINUANCE OF A TRIAL DATE

13.01 DEFINITIONS

Reset: The rescheduling of a trial date within ten (10) days of the mailing of the Notice of Trial by the Court, of an assigned trial date due to the unavailability or conflict of the scheduling of an attorney, party or witness.

Continuance: The rescheduling of a trial date after the expiration of the time specified for resets. (Adopted effective October 1, 1998)

13.02 PROCEDURE FOR RESETTING CASES:

Since all trials are set without the necessity of appearance at a Trial Setting Conference and therefore without personal concurrence of trial counsel, the resetting of any assigned trial, Settlement conference or pretrial date can be accomplished if the request is made within ten (10) days of the date of mailing of the Clerk's Notice of Trial. The procedure for obtaining a resetting of an assigned date is as follows.

1. Notification of the Court Calendar Coordinator within ten (10) days of the Clerk's Notice of Trial of a conflict with the assigned date.
2. The Calendar Coordinator will give the requesting counsel a proposed date which is compatible with the Superior Court calendar.
3. The attorney requesting the resetting will confirm the proposed date as a mutually acceptable date with the opposing trial counsel.
4. A written stipulation stating the reason for the reset and the new trial date signed by both counsel will be filed with the Court. Only one (1) reset will be allowed on each case. (Adopted effective October 1, 1998; Amended effective July 1, 2004)

13.03 PROCEDURE FOR CONTINUING CASES

Any motion for continuance must be made before the Civil Supervising Presiding Judge. (Adopted effective October 1, 1998; Amended effective July 1, 2004)

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CHAPTER 14

CRIMINAL DEPARTMENT

14.01 PENAL CODE 995 AND 1538.5 MOTIONS

Except for good cause shown, all Motions to Set Aside the Indictment or Information must be set for hearing within ten (10) days of the date of arraignment. All Motions to Suppress Evidence must be calendared for setting within ten (10) days of the date of arraignment. (Adopted effective October 1, 1998)

14.02 OTHER PRETRIAL AND DISCOVERY MOTIONS

All other pretrial and discovery motions must be heard prior to the Pretrial Conference.

- a) At the time of the defendant's first appearance on a criminal matter, an informal request for continuing discovery shall be deemed to have been made by the defendant requesting the prosecutor to comply with Penal Code Section 1054.1, and by the prosecutor, requesting the defendant to comply with Penal Code Section 1054.3. (Adopted effective October 1, 1998; Amended effective July 1, 2002)

14.03 DISCOVERY

Rule 14.03, Repealed effective January 1, 2000.

14.04 STANDING DISCOVERY ORDER

Rule 14.04, Repealed effective January 1, 2000.

SHORT CAUSE CRIMINAL

14.05 PRE-TRIAL CONFERENCE CALENDAR

In order to reasonably predict the business of the Court, anticipate assignments of judges, and to eliminate unnecessary inconvenience to parties, witnesses and trial jurors, a pre-trial conference shall be held in every criminal case (including traffic) in which a trial by jury has been demanded.

- a) Procedures. The judge in each department shall, at the time of arraignment and entry of plea, set the date for pre-trial conference.
- b) Date Set for Trial. Once a case is set on the pre-trial conference calendar, it may not be changed without the approval of the judge before whom it is assigned.

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- c) Failure to Appear at Pre-trial Conference. Any failure of an attorney to prepare for, appear at, or participate in, a pre-trial conference, unless good cause is shown for any such omission, is an unlawful interference with the proceedings of the Court and may be punished as contempt.
- d) Trial Brief Requirement. In all criminal matters where the case does not settle at the pre-trial conference and the matter remains set for trial, trial counsel will be required to file a brief no later than 12 noon on Friday for all felony cases and no later than 3 p.m. on Friday for all misdemeanor cases immediately proceeding the trial date (in most instances the following Monday) unless an earlier date is ordered by the court. The only exception to the timely filing of a trial brief is by authorization of the presiding judge or the presiding judge of the criminal division.

The trial brief shall include the following:

- A brief factual statement of the case that can be read to the jury
- Proposed jury instructions
- All in limine motions along with supporting points and authorities
- Proposed voir dire questions that are being requested
- A list of any witness problems that may interfere with the timely conduct of the trial
- Any other issues that will have to be dealt with by the trial judge
- Witness list
- Exhibit list
- Proposed verdict form

(Adopted effective October 1, 1998; Amended effective July 1, 2001; Amended effective January 1, 2004)

14.06 JURY TRIAL READINESS CALENDAR

There shall be a jury trial readiness calendar for all criminal and traffic misdemeanor cases at which time all trial counsel must be present. The trial readiness conference is to be a sincere effort by the attorneys and parties to eliminate congestion of the trial calendar so long as justice can be properly afforded to all parties. If the trial attorney fails to appear, the Court may, in its discretion, find him/her in contempt.

- a) Procedures. Upon the calling of such readiness calendar, all motions for continuance, waiver of jury, change of plea, reductions, or other procedural matters shall be presented. In the event the case is not disposed of at the trial readiness conference and a trial date is requested or confirmed, all offers on either side will be deemed withdrawn and the case will be set for trial and tried on all counts. No further amendments to pleadings or continuances will be granted except for good cause shown.
- b) Date Set for Trial - Duties. When the parties announce they are ready for trial, the parties announce that:

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The respective attorneys are prepared to commence the trial immediately.

All pre-trial motions and discovery have been completed.

All witnesses are readily available and have been interviewed by the respective attorneys.

The attorneys' calendars permit them to commence the trial immediately and see it to conclusion.

c) Proposed Jury Questionnaires. Unless waived by the trial judge, counsel shall submit proposed jury questionnaires to the court 15 court days in advance of the trial date. Upon receipt, the questionnaires shall not be officially filed by the Clerk of the Court, but shall be immediately forwarded by the Clerk of the Court to the trial judge for review.

d) Continuance Policy. The welfare of the People of the State of California requires that all proceedings in criminal cases shall be set for trial and heard at the earliest possible time (PC1050). Therefore, it is the policy of this court to maximize the use of judicial time and avoid continuances, resetting and unnecessary trailing of cases. Any motion to continue in a criminal proceeding must comply with Penal Code Section 1050. Further, this Court adheres to no trial continuance policy - when a courtroom event is scheduled, that event should take place as scheduled.

1. Counsel.

a) Counsel's attention is directed to Rule 6-101 of the Rules of Professional Conduct State Bar of California, "Failing to Act Competently"

b) A member of the State Bar shall not:

1. Accept employment or continue representation in a legal matter when the member does not have sufficient time, resources and ability to perform the matter with competence, or

2. Repeatedly accept employment or continue representation in legal matters when the member reasonably should know that the member does not have or will not acquire before performance is required, sufficient time, resources and ability to perform the matter with competence.

c) Counsel should not set a case if they are committed to another trial during that period or if they are going to be on vacation. This includes cases set in Superior Court and cases in different branches and departments of the Court. Counsel should not schedule other

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cases to begin if they have another matter set in Court. Neither reason constitutes "good cause" for a continuance.

- d) Motions, pre-trials and trials are to be heard at the date and time set
 - e) Substitute Counsel: An attorney who appears for another attorney is representing the defendant then before the Court. An attorney who makes such an appearance is required to do so competently. California Rules of Professional Conduct 6-101-A(1). Such an attorney is expected to be prepared to carry out and perform any duties required at that calendar event; should a continuance be required it is his or her responsibility to have complied with this policy and to know when the other attorney will be available to appear; if a case is not to be tried, he or she should have the authority to dispose of the case. Should these rules not be complied with, sanctions will be applied against this attorney. CCP 128.5, CCP 177.5, California Rules of Court 227. At the next scheduled calendar event, the counsel of record must file a declaration with the Court explaining his or her ability to be present at the last calendar event.
 - f) Counsel should not delay in filing and serving proper motions. Failure to timely file or serve without good cause will result in the imposition of sanctions.
 - g) Counsel should subpoena witnesses as soon as a case is set for hearing or trial.
 - h) Counsel should not accept representation of a defendant if he/she does not have sufficient time to adequately prepare before the next scheduled event.
2. Motions. Motions to continue must comply with Penal Code Section 1050. Courtroom events will be continued only when extraordinary circumstances, not within the control of the parties and which were not foreseeable at the time of setting the date of the event, necessitate a continuance. In ruling on motions to continue, the following factors will be taken into consideration:
- a) The time when the need for the continuance arose and the diligence of counsel in bringing the need for a continuance to the attention of the Court and opposing counsel at the earliest possible date and in attempting to avoid a continuance;
 - b) The proximity of trial, the age of the case, the established time limits for processing cases, and the nature of any previous continuances or prior orders entered in the case.

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- c) The earliest possible date all parties and the Court will be ready to proceed;
 - d) Whether the continuance may be avoided by substitution of attorneys or witnesses, or by the use of stipulations as to testimony, and
 - e) The injury or inconvenience caused to the party not requesting the continuance.
- 3) Good Cause. Continuances will only be granted on the showing by competent evidence of good cause. The facts proven justifying good cause and the length of continuance shall be set forth on the record. Good cause is not shown by the following:
- a) Counsel's vacation or commitment to another trial or proceeding except as provided Penal Code Section 1050(g)
 - b) Failure of a client to adhere to a financial agreement with his/her attorney.
 - c) Failure to expeditiously prepare for trial
 - d) A witness's vacation or attendance at school unless this is accompanied by a showing of the witness's unavailability, that the testimony is material and that the party seeking the attendance exercised due diligence to secure the presence of the witness
 - e) Informal diversion
 - f) A civil compromise pursuant to Penal Code Section 1378
 - g) Other pending cases
 - h) Negotiations not yet completed

(Misdemeanor cases coming within (e) and (f) can be conditionally dismissed on waiver of the prohibition against re-filing).

- 4. No continuance will be granted solely because all parties agree thereto.
- 5. The failure to adhere to this policy will result in the imposition of sanctions and the assessment of reasonable costs. CCP 128.5, CCP 177.5, California Rules of Court 227.
- 6. Trailing: Should it be necessary that cases be trailed for hearing or trial, they will be trailed day by day. The case will be called each day at 11:30, 4:30 and the next day at 8:30. When a case is trailing, the

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defendant and counsel, except in extraordinary circumstances, must be present when the case is called. (Adopted effective October 1, 1998; Amended effective July 1, 2002; Amended effective January 1, 2004)

14.07 EVIDENTIARY PRE-TRIAL

In all misdemeanor pre-trial motions requiring the presentation of any evidence of any party will be noticed in writing with proof of service of opposing party(ies) filed no later than five (5) calendar days prior to the date of hearing, unless, for good cause shown, and upon written order of court, time is shortened for the filing of said pre-trial motion.

a) Motion to Suppress Evidence. In misdemeanor cases, whenever a Penal Code Section 1538.5 motion to suppress evidence is made, the moving party shall file written points and authorities at least seven (7) days prior to the date of the hearing. The written points and authorities shall:

1. Identify with particularity the evidence sought to be suppressed;
2. Specifically state the legal theory(ies) which will be relied upon; and
3. Cite the specific authority(ies) which will be offered in support of the motion. (Adopted effective October 1, 1998)

14.08 MODIFICATION OF SENTENCE ADJUDGED

The judge placing a defendant on probation in a misdemeanor case shall, as far as practicable, hear any application for modification, change, or termination of probation, except for applications under P.C. 1203.4 or 1203.45.

Any request for modification of sentence imposed must be filed in writing on a form provided by the Court. (Adopted effective October 1, 1998)

14.09 COURT APPOINTED COUNSEL

Only the Office of the Public Defender shall be appointed as counsel in all appointments authorized under Penal Code Section 987 et. al. In situations involving conflict of interest filed by the Office of the Public Defender of Monterey County referral will be made to the Alternate Defender's Office for appointment of counsel. (Adopted effective October 1, 1998; Amended effective January 1, 2004)

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**14.10 APPEALS IN MISDEMEANOR CASES THAT WERE ELECTRONICALLY
RECORDED**

The provisions of Rule 187.5, California Rules of Court, apply to appeals in misdemeanor matters in which the proceedings were electronically recorded on the Court's equipment, and which were not taken by a court reporter. (Adopted effective October 1, 1998)

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CHAPTER 15

WRITS

15.01 WRIT JUDGE

The writ judge shall be designated by the Presiding Judge. Writs involving custodial institutions and parole or probation must be addressed to the writ judge. (Adopted effective October 1, 1998)

15.02 WRIT CALENDAR

The writ calendar before the writ judge shall be heard in Salinas on Wednesdays at 1:30 p.m. If Wednesday falls on a Court holiday, the writ calendar shall be heard on the following judicial day. (Adopted effective October 1, 1998; Amended effective January 1, 2000)

15.03 WRITS FROM THE COURT

Petitions for writs of mandate, prohibition, certiorari, habeas corpus or supersedeas from the Court must be addressed to the Presiding Judge of the Appellate Department. (See Appellate Department Rules, Chapter 9) (Adopted effective January 1, 2000)

15.04 ALL OTHER WRITS

All other writs, including petitions for writs of mandate, review and prohibition and petitions for alternative writs, must be addressed to the judge assigned to the law and motion departments. (Adopted effective January 1, 2000)

15.05 HABEAS CORPUS

The petition must be verified.

The petition should be served on the Presiding Judge of the respondent Court and on the People before filing. (Adopted as Rule 15.03 effective July 1, 1999; Renumbered effective January 1, 2000)

15.06 ADMINISTRATIVE RECORD

A party intending to use an administrative record in a case brought under section 1094.5 of the Code of Civil Procedure shall lodge the record in the department in which the matter will be heard at least five (5) court days before the hearing. (Adopted effective January 1, 2000)

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CHAPTER 16

MENTAL HEALTH DEPARTMENT

16.01 MENTAL HEALTH JUDGE

The Mental Health Judge shall be designed by the Presiding Judge. (Adopted effective October 1, 1998)

16.02 CALENDAR

All mental health cases initiated under Welfare and Institutions Code, Section 5000, et seq. (Lanterman-Petris-Short Act) shall be heard on Fridays at 1:30 P.M. If Friday falls on a Court holiday, the mental health calendar shall be heard on the preceding judicial day. (Adopted effective October 1, 1998)

16.03 JURY TRIALS

If a jury trial is demanded, the trial date will be set by the Mental Health Judge. The case will then be transferred to the Presiding Judge for assignment on the master calendar. (Adopted effective October 1, 1998)

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CHAPTER 17

DUTIES OF ATTORNEYS

17.01 NOTIFICATION OF SETTLEMENT

Whenever any case pending on the trial calendar is settled, the attorneys shall immediately notify the Court. Failure to do so shall be deemed to be an unlawful interference with the proceedings of the Court. (Adopted effective October 1, 1998)

17.02 EXAMINATION OF WITNESSES

Only one attorney on each side will be permitted to examine or cross-examine the same witness. (Adopted effective October 1, 1998)

17.03 SUBSTITUTION

When an attorney withdraws from an action or proceeding and no other counsel is substituted, he shall endorse upon the withdrawal the address and telephone number of the client. (Adopted effective October 1, 1998)

17.04 COPIES OF JUDGMENTS

Attorneys shall furnish the Clerk with a duplicate copy of all judgments and appealable orders. (Adopted effective October 1, 1998)

17.05 TIMELY FILING

It shall be the duty of counsel, on all documents of whatsoever nature presented for filing as part of the official court file, to indicate the date of any pending court trial or hearing to which the documents may be pertinent, as part of or directly below the caption describing the nature of the document. The Clerk shall process court filings on a priority basis, ensuring that all documents are properly entered and filed in the appropriate court file with all due promptness following receipt. The Clerk shall further give all necessary processing priority to documents with pending court trial or hearing dates, insuring that documents reach the court file prior to delivery of the file to the Court for hearing, or as soon thereafter as is reasonably possible in consideration of the date of receipt. (Adopted effective October 1, 1998)

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CHAPTER 18

JURY RULES

18.01 JURY COMMISSIONER

In the opinion of a majority of the judges, the business of the Court requires the appointment of a Jury Commissioner to perform the functions of Jury Commissioner provided for by law and these rules. The Superior Court Executive Officer shall act as Jury Commissioner and is designated as the "attache" of the Court to perform the functions of Jury Commissioner. Said functions may be performed by such Deputies as may be designated by the Executive Officer. (Adopted effective October 1, 1998)

18.02 JURY SELECTION PROGRAM

- a) Source Lists. The Jury Commissioner shall prepare and keep a consolidated, master list of eligible juror candidates. The list shall be drawn from source lists comprised of the name and address of persons who reside in the County, and who are 18 years of age or older, shall include those who are registered voters, and those who have been licensed or issued an identification card pursuant to Article 3 (commencing with Section 12800) and Article 5 (commencing with Section 13000) of Chapter 1 of Division 6 of the Vehicle Code. The master list shall be prepared so as to avoid as much as possible duplication of eligible juror candidates and to exclude those persons who completed jury service in the prior two calendar years.
- b) Consolidated Master List. A consolidated, countywide master list shall be utilized by the Jury Commissioner in summoning jurors for the Courts in the Salinas, Monterey, King City, and Marina courthouse locations. The selection of the master jury list shall be at random from the jury source lists.
- c) Preparation of Prospective Juror Lists. Except for a person nominated by the Court pursuant to statutory authority therefore, the name of each prospective trial juror shall be taken by random selection from the most current master jury list.
- d) Drawing of Names; Summons. The Jury Commissioner will draw from the master jury list a sufficient number of names of prospective jurors as he or she determines to be required to provide adequate jury services to the Courts for a particular time period, and each person shall be summoned by first class mail to attend the Court for service as a member of a trial jury panel. Once a juror has appeared for service, and prior to his or her discharge as a juror as heretofore provided, such juror may be required to report back to the Court for further service upon either personal or telephonic oral direction of the Court, or of the Jury Commissioner or Deputy Jury Commissioner, acting on behalf of the Court.

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- e) Combined Jury Panels. The Courts will utilize a combined, countywide jury panel for Superior Court trials at all court locations. (Adopted effective October 1, 1998; Amended effective January 1, 2003)

18.03 JURY UTILIZATION PROGRAM

- a) Excuse from Jury Service. The Jury Commissioner shall determine the statutory qualifications of each prospective trial juror. He or she shall exclude from the certified jury lists any person he or she shall find is not statutorily competent to serve, and may excuse from jury service such prospective trial juror who in his or her determination requests and qualifies for excuse under Sections 204(b) and 218 of the Code of Civil Procedure, provisions of the Standards of Judicial Administration, California Rules of Court, and of these Rules and policies adopted by the Superior Court.
- b) Procedure for Excuse from Jury Service. The Jury Commissioner may, upon request, defer the service of a prospective juror for good cause, transfer a juror to any court location within the county for good cause, or may excuse a prospective juror from service altogether, for either of the following reasons:
 - 1. The prospective juror qualifies for excuse from service on the basis of one of the categories set forth in the Standards of Judicial Administration, California Rules of Court as interpreted by Superior Court policies.
 - 2. Other circumstances constituting undue hardship within the meaning of the statutes, Standards of Judicial Administration, or rules or policies of this Court apply to the prospective trial juror, as determined by the Jury Commissioner and/or Presiding Judge of the Court.

A request for excuse from jury service shall be addressed to and determined by the Jury Commissioner. The Jury Commissioner shall fairly weigh and consider all relevant information and he or she may personally interview the prospective trial juror when he or she deems it desirable or necessary to do so. The Jury Commissioner may refer any request to the Presiding Judge for his or her determination. In the event the Jury Commissioner should deny a request for excuse the prospective trial juror may request and shall be entitled to review and reconsideration by the Presiding Judge. The disposition of the request and the reasons therefor shall be noted upon appropriate records maintained by the Jury Commissioner. (Adopted effective October 1, 1998)

18.04 SPECIAL VENIRE

Nothing contained in the foregoing rules shall preclude the Jury Commissioner, upon order of the Court, from drawing from the master jury list and summoning to the Court pursuant to law, a special venire for jury service in a particular case. (Adopted effective October 1, 1998)

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18.05 DEPOSIT AND REFUND OF JURY FEES

- a) Jury Fees. Jury fees are returnable only when notice of cancellation of jury is received by the Court or the Clerk thereof two (2) court days before the date of trial, which notice may be given by telephone or otherwise. The deposit for jury fees, pursuant to Section 631 of the Code of Civil Procedure, is fixed at One Hundred and Fifty Dollars (\$150.00).
- b) Waiver. Upon waiver of trial by jury by announcement or by operation of law, demand for trial by jury by opposing counsel shall be accompanied by a deposit for jury fees. (Adopted effective October 1, 1998; Amended effective January 1, 2003)

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CHAPTER 19

MISCELLANEOUS RULES

19.01 PEREMPTORY CHALLENGE

If a Peremptory Challenge is filed on any matter assigned to a particular department, the case shall be immediately referred to the Presiding Judge for reassignment. (Adopted effective October 1, 1998)

19.02 SANCTIONS

Failure to comply with these rules and the California Rules of Court may result in the imposition of sanctions in the discretion of the Court including but not limited to:

- a) The matter being dropped from the calendar.
- b) A fine ordered paid to the Clerk of the Court by the responsible party and/or counsel.
- c) Costs, actual expenses, counsel fees or any or all thereof arising therefrom. (Adopted effective October 1, 1998)

19.03 RECORDING IN COURTS

No electronic recording of court proceedings other than by the official court reporting methods shall be permitted without approval of the Court. (Adopted effective October 1, 1998; Amended effective July 1, 2004)

19.04 PROPOSED ORDERS

The attorney preparing a formal order following a court hearing shall provide opposing counsel an opportunity to review and approve a proposed order as to form and content before submitting the order to the Court for signature. (Adopted effective October 1, 1998)

19.05 EXHIBITS

Evidence admitted in any case before any court shall be only those items required in the case and shall be retained by the court for the minimum time required by law, unless good cause is shown to retain the evidence. No exhibit shall be received by any court if the exhibit poses a security, storage, safety, or health problem. (Penal Code section 1417)

Exhibits which will not be received include, but are not limited to:

- 1. Any type of explosive powder;
- 2. Explosive chemicals, toluene, ethane;
- 3. Explosive devices, such as grenades or pipe bombs;

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4. Flammable liquids such as gasoline, kerosene, lighter fluid, paint thinner, ethyl-ether;
5. Canisters containing tear gas, mace;
6. Rags which have been soaked with flammable liquids;
7. Liquid drugs such as phencyclidine (PCP), methamphetamine, corrosive liquids, pyrrolidine, morpholine, or piperidine; and
8. Samples of any bodily fluids, liquid or dried.

No exhibits shall be accepted by the exhibits custodian unless:

1. All containers with liquid substances are clearly marked and identified as to type and amount;
2. All containers of controlled substances are clearly marked, identified, weighed, and sealed;
3. All cash is specifically identified, whether individually or packaged, as to the total amount and number of each denomination;
4. All firearms are secured by a nylon tie or trigger guard; and
5. All hypodermic needles are placed in containers which will safeguard personnel.

Unless otherwise ordered, unidentified liquids, containers, controlled substances, or other suspect substances shall be returned to the party offering them.

A court, in its discretion, may admit any exhibit in the interest of justice. However, the following rules will be taken into consideration prior to approval.

a) Photographs. Original photographs shall be substituted for any photographically enlarged exhibits. A court, in its discretion, may order a photograph substituted for large or bulky exhibits which might pose a storage problem.

b) Diagrams and Charts. Diagrams and charts shall not exceed 27"x40", without prior order of the Court. Attorneys are encouraged to use the Court's overhead projector and video cassette recording equipment when presenting evidence in the courtroom. (Adopted effective October 1, 1998; Amended effective July 1, 2000)

19.06 USE OF CORRECTION FLUID OR TAPE ON DOCUMENTS AND PAPERS

Correction fluid or tape shall not be used to correct errors in dates, monetary amounts, names of parties, or legal descriptions on any documents or papers, of any nature, presented for filing as part of the official court file. Documents or papers presented for filing with such errors corrected with correction fluid or tape shall be refused for filing by the Clerk of the Court, unless otherwise ordered by the Court. (Adopted effective October 1, 1998; Amended effective January 1, 2002)

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19.07 TAPING AND EDITING RULES FOR VIDEO DEPOSITIONS

In addition to the requirements of Civil Code of Procedure section 2025, the following rules shall be followed regarding the taping and editing video depositions.

TAPING OF VIDEO DEPOSITION:

- a) Head and shoulders view of witness only;
- b) No split screen allowed;
- c) A plain background shall be used; no photographs or pictures shall be in the background;
- d) Only normal room lighting shall be used; no additional lighting shall be used without court permission or agreement of opposing counsel; and
- e) The running time for the tape shall be displayed at the bottom of the picture.

EDITING OF VIDEO DEPOSITION:

- a) Full questions and answers are required;
- b) Pauses shall remain in questions and answers;
- c) Pauses at end of answer and before next question may be edited out;
- d) Introduction of subject matter for a section of tape by non-argumentative description is allowed (e.g., voice over of trial counsel or character display);
- e) Objections and comments of counsel on record shall be edited out;
- f) An edited version of the video deposition shall be exchanged with counsel 30 days before the pre-trial or settlement conference;
- g) Sections of the video deposition offered for impeachment must comply with these taping and editing rules, but exchange between counsel is not required before trial; and
- h) At the time of the use of impeaching material, opposing counsel and the court must be provided with marked transcript pages or pages and line numbers. (Adopted effective October 1, 1998)

19.08 LEGAL DOCUMENT ASSISTANTS

All legal document assistants as defined by Business & Professions Code section 22440 et. seq. (Immigration Consultants), or Business & Professions Code section 6400 et. seq. (Legal Document Assistants and Unlawful Detainer Assistants) shall comply with the requirements of Business & Professions Code section 6408. Business & Professions Code section 6408 states: "The registrant's name, business address, telephone number, registration number, and county of registration, shall appear on any ... appropriate papers or documents prepared by the registrant, including, but not limited to, contracts...documents, forms, claims, petitions,... and pleadings."

Failure to comply with Business & Professions Code section 6408 will be treated the same as failure to comply with Rule 201 of the California Rules of Court.

The Clerk of the Court shall not accept for filing or file any papers which do

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not comply with this rule, but for good cause shown the court may permit the filing of papers which do not comply. (Adopted effective July 1, 2000)

19.09 INTERNET AND HOME STUDY TRAFFIC SCHOOL COURSES

The Court does not authorize the use of internet or online traffic school courses. (Adopted effective March 26, 2001)

19.10 COURT REPORTING SERVICES

Pursuant to California Rules of Court 891, 892, and Government code Section 68086, the Court hereby adopts the following policy as a local rule.

The Court provides services of official court reporters in all criminal and juvenile matters as required by law during regular court hours. Court reporting services will not be available for the Department of Child Support Services calendar. (Adopted effective January 1, 2003; Amended effective April 1, 2003)

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CHAPTER 20

**POWERS AND DUTIES OF EXECUTIVE OFFICER AND
CLERK OF THE SUPERIOR COURT**

**20.01 APPOINTMENT OF EXECUTIVE OFFICER TO ACT AS CLERK OF THE
SUPERIOR COURT**

Pursuant to Government Code section 69898(c) and (d), the Court hereby appoints the Superior Court Executive Officer to act as the Clerk of the Superior Court and transfers from the County Clerk to the Superior Court Executive Officer, all of the functions, powers, duties, and responsibilities of the County Clerk, as Clerk of the Superior Court. (Adopted effective October 1, 1998)

20.02 TRANSFER OF POWERS AND DUTIES

A. The County Clerk is hereby relieved of any obligation otherwise imposed by law with respect to the following functions, powers, duties, and responsibilities which shall be performed by the Court Executive Officer, acting as Clerk of the Superior Court. The powers, duties and responsibilities transferred pursuant to this rule shall include all of those performed by the County Clerk, as Clerk of the Superior Court, with respect to Superior Court actions, proceedings and records, including but not limited to:

1. The acceptance, processing and filing of papers in connection with any action or proceeding before the court, including but not limited to those relating to the court's original jurisdiction, appellate jurisdiction and appeals from the Court;
2. The maintenance, storage and management of court records and files; the archiving, microfilming and destruction of court records, documents, files and exhibits in accordance with law;
3. The maintenance of indices of all court files;
4. The issuance of process and notice including without limitation, summons, writs of execution and other writs; subpoenas to witnesses; probate notices; citations in probate, guardianship, conservatorship, and other matters; the acceptance of service on parties; the entry of defaults; the transmission of transcripts on change of venue;
5. The attendance at each session of court; the keeping of minutes and other records of the court;
6. The provision of courtroom clerk services, secretarial services, court interpreter services, and court reporter services;
7. The performance of all clerk functions for administering oaths to witnesses and impaneling juries;

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8. The entry of orders, findings, judgments and decrees; the acceptance for filing of confessions of judgment; the authentication of records; certification of abstracts of judgment; the keeping of a judgment book or its equivalent;
 9. The collection, receipt, deposit and accounting of fees for filings, for preparing or certifying copies and for other fees; the receipt of jury fees, bonds, undertakings, fines, forfeitures and revenues; the keeping of money deposited in court, including but not limited to funds received in connection with minor's compromises;
 10. The maintenance of statistical and financial records and the preparation of reports to the Judicial Council and other state and county offices as required by law or policy;
 11. The preparation of the clerk's transcript on appeal and the transmission of the record and exhibits to the reviewing court;
 12. The receipt of wills of decedents;
 13. The taking of bail and related matters as provided in the Penal Code;
 14. The provision of calendar management, including the calendaring of trials and hearings and maintaining automated case management and filing systems;
 15. The printing, inventory, and sale of court forms, judicial council forms, and local rules of Court;
 16. The keeping and affixing of the seal of the court to appropriate instruments; and
 17. The performance of administrative functions related to the above, including hiring, training and supervision of court personnel; preparation of the court's budgets; accounting functions; procurement and inventory functions;
- B. The Court reserves the power to delegate to the Court Executive Officer any other functions, duties and responsibilities relating to operation of the Court not otherwise specifically set forth in this chapter, as provided for by Government Code section 69898.
- C. If any portion of this chapter is held to be unconstitutional or invalid, the remaining parts shall not be affected thereby. (Adopted effective October 1, 1998; Amended effective January 1, 2001)